LIBRARY OF CONGRESS

+ + + + +

COPYRIGHT OFFICE

+ + + + +

COPYRIGHT ARBITRATION ROYALTY PANEL

+ + + + +

In the matter of:

Docket No.

Digital Performance Right in Sound Recording and Ephemeral Recording

CARP DTRA 1 & 2

CARP Hearing Room
LM-414
Library of Congress
Madison Building
101 Independence Ave, SE
Washington, D.C.

Thursday
August 2, 2001

The above-entitled matter came on for hearing, pursuant to notice, at 9:00 a.m.

BEFORE

THE HONORABLE ERIC E. VAN LOON Chairman
THE HONORABLE JEFFREY S. GULIN Arbitrator
THE HONORABLE CURTIS E. von KANN Arbitrator

NEAL R. GROSS

APPEARANCES:

On Behalf of Clear Channel Communications, Inc., National Religious Broadcasters Music License Committee, and Salem Communications Corporation

BRUCE G. JOSEPH, ESQ.
THOMAS W. KIRBY, ESQ.
of: Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-4913
(202) 719-7000

On Behalf of American Federation of Television and Radio Artists

ARTHUR J. LEVINE, ESQ.
of: Finnegan, Henderson, Farabow,
Garrett & Dunner, LLP
1300 I Street, N.W.
Washington, D.C. 20005-3315
(202) 408-4032

On Behalf of the Association for Independent Music

JACQUES M. RIMOKH, ESQ.
BARRY I. SLOTNIK, ESQ.
of: Bingham Dana, L.L.P.
885 Third Avenue
New York, New York 10022-4689
(212) 207-1770

APPEARANCES: (Cont'd)

On Behalf of BET.com; CBS Broadcasting, Inc.; Comedy Central; Coollink Broadcast Network; Echo Networks, Inc.; Everstream, Inc.; Incanta, Inc.; Launch Media, Inc.; Listen.com; Live365.com; MTVi Group, LLC; MusicMatch, Inc.; MyPlay, Inc.; NetRadio Corporation; Radioactive Media Partners, Inc.; RadioWave.com, Inc.; Entercom Communications Corporation; Spinner Networks, Inc.; Susquehanna Radio Corp.; Univision Online; Westwind Media.com, Inc.; and Xact Radio Network, LLC

ADAM I. COHEN, ESQ.
MARK A. JACOBY, ESQ.
R. BRUCE RICH, ESQ.
KENNETH L. STEINTHAL, ESQ.

of: Weil, Gotshal & Manges, LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8622

On Behalf of AEI Music Network; DMX Music, Inc.

DAVID R. BERZ, ESQ.
of: Weil, Gotshal & Manges, LLP
1615 L Street, N.W.
Suite 700
Washington, D.C. 20036
(202) 682-7272

SANDRA M. AISTARS, ESQ.

On Behalf of the Recording Industry Association of America, Inc.

JOHN A. FREEDMAN, ESQ.
ROBERT ALAN GARRETT, ESQ.
BRAD R. NEWBERG, ESQ.
RONALD A. SCHECHTER, ESQ.
JULE L. SIGALL, ESQ.
CHRISTOPHER WINTERS, ESQ.
MICHELE J. WOODS, ESQ.

of: Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004
(202) 942-5719

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS 1323 RHODE ISLAND AVE., N.W. WASHINGTON, D.C. 20005-3701

APPEARANCES: (Cont'd)

On Behalf of Public Radio:

DENISE LEARY, ESQ.

of: Public Radio, Inc.

635 Massachusetts Avenue, N.W.

Washington, D.C. 20001

(202) 513-2049

On Behalf of American Federation of Musicians of the United States and Canada:

PATRICIA POLACH, ESQ.

of: Bredhoff & Kaiser, P.L.L.C.

805 15th Street, N.W.

Suite 1000

Washington, D.C. 20005

(202) 842-2600

NEAL R. GROSS

C-O-N-T-E-N-T-S

WITNESS	DIRECT	<u>CROSS</u>	REDIRECT	RECROSS
Paul Katz By Mr. Schechter	997		1082 1129	
By Mr. Steinthal		1016		1115 1133
Charles Ciongoli By Ms. Woods	1134			

EXHIBIT	DESCRIPTION	MARK RECD
SX-10	NMPA survey	1053 1055

1	P-R-O-C-E-E-D-I-N-G-S
2	(9:02 a.m.)
3	CHAIRMAN VAN LOON: Good morning,
4	everyone. Perhaps we should deal quickly with a
5	couple of administrative matters. First, I guess,
6	could we get the time report from yesterday?
7	I'm sorry. Could you please identify
8	yourself for the record, and speak up so he can hear?
9	MR. HARDING: Tom Harding. I believe that
10	we agreed did you want a running total?
11	CHAIRMAN VAN LOON: Yes.
12	MR. HARDING: The running total that I
13	believe that we agreed on is for our side, 2 hours and
14	33 minutes, and for their side, 5 hours and 57
15	minutes.
16	ARBITRATOR VON KANN: What was the first
17	figure, two, how much?
18	MR. HARDING: 2:33.
19	ARBITRATOR VON KANN: So eight-and-a-half
20	hours we have done in three days since the first day
21	of hearings.
22	MR. HARDING: First two days.

11

12

13

14

15

16

17

18

19

20

21

22

CHAIRMAN VAN LOON: Okay. We'd like to couple of short, but important, other The first is to underscore administrative matters. that actually right outside this hearing room is a small alcove work area for the staff of the Library of Congress. It includes their phone, their fax machine, and fax line. Apparently someone yesterday unplugged the fax machine in order to plug in their laptop, which is a policy or practice which we should not continue.

Also, they are of course willing and wanting to be flexible if someone needs the phone for a quick two-minute call. They want to accommodate that, but apparently at one point yesterday there was 40 minutes or something. I'm obviously the reporter, not directly aware of this, but they need the use of their phone line except for very short ones. Also the fax machine, which is set up there is not designed to be used for incoming faxes to you all. So we have asked to communicate that as sort housekeeping matter.

Of somewhat more significance, there has

also been requests from the legal office, and I think that this is a good practice for all of us, if at the end of each week we could be provided, the Panel and the staff here, with your proposed schedule and list of witnesses by day for the upcoming week. that there will be instances where those have to be shifted due to plane schedules or delays or one thing But in addition to our running longer or shorter. being prepared and on top of things, outside members of the media, for example, are interested in who is going to be on the stand at any given day as are other appropriate persons. So I think for all of our planning, it would make sense the end of each week to have sort of the expected line-up for the upcoming We'd appreciate that. week.

Ms. Woods?

MS. WOODS: Michele Woods. I had also understood that we were to provide information on whether we expected sessions to be largely or partially closed.

CHAIRMAN VAN LOON: Thank you for that reminder. That is absolutely correct. That is

NEAL R. GROSS COURT REPORTERS AND TRANSCRIBERS 1323 RHODE ISLAND AVE., N.W. WASHINGTON, D.C. 20005-3701

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

1	another important aspect of that. Obviously we would
2	ask for the Panel, but for outside persons.
3	MR. SCHECHTER: For next week, would the
4	Panel like that by close of business today or
5	tomorrow?
6	CHAIRMAN VAN LOON: If it is possible
7	today, that would be outstanding.
8	MR. SCHECHTER: Given the way the hearing
9	is moving, we are still trying to adjust next week's
10	schedule.
11	CHAIRMAN VAN LOON: Well, let's give until
12	tomorrow so that you have more time to make those
13	adjustments.
14	MR. SCHECHTER: Yes. It would be more
15	tentative today than it might.
16	CHAIRMAN VAN LOON: Right.
17	MR. RICH: If I may speak to that point.
18	Within limits, that would be fine. But for example,
19	if some experts who were at the very end of the case
20	and we anticipate to be major witnesses, and tomorrow
21	we were advised they are going to appear Monday
22	morning, I think it might be problematic.

1	MR. SCHECHTER: That is not the case.
2	MR. GARRETT: I think we can state also
3	that our first witness will be Mr. Griffin, and will
4	be followed by Mr. Wilcox. I do not anticipate that
5	changing.
6	CHAIRMAN VAN LOON: And the ones that we
7	were expecting in addition to those two are Vidich,
8	Evans, Papitone, Hessinger, Kenswil, Dorsey, Samit,
9	and Himelfarb.
10	MS. WOODS: Yes. We don't expect any of
11	those witnesses to drop out of next week. It is a
12	question of whether we can find some other witnesses
13	who are able to move their schedules forward.
14	CHAIRMAN VAN LOON: Outstanding.
15	MR. SCHECHTER: We are working on that.
16	CHAIRMAN VAN LOON: Okay. With Mr. Rich's
17	proviso.
18	MR. SCHECHTER: Oh no, we won't do that.
19	I mean it may mean moving someone from early the
20	following week to late next week. We'll let you know
21	as soon as we can figure that out.
22	CHAIRMAN VAN LOON: Yes, Ms. Woods?

i	
1	MS. WOODS: I was going to say we would be
2	happy to notify the other side. Perhaps if there's
3	somewhere here we ought to be contacting you, if you
4	wanted to let me know that, I would be happy to.
5	CHAIRMAN VAN LOON: We will discuss that.
6	Thank you.
7	MR. RICH: Mr. Chairman, I don't know if
8	you are through your items. I have one when you are
9	completed with your list, an administrative matter.
10	CHAIRMAN VAN LOON: We do have one other.
11	As a further follow-up on the matter that we had been
12	discussing the day before last and then again
13	yesterday, the matter of getting access to the
14	restricted record and restricted expert reports, there
15	was at least one aspect of further development from
16	the Copyright Office legal staff. Maybe, Mr. Rich,
17	that is the subject of your report as well?
18	MR. RICH: I have an independent, a report
19	independent of that.
20	CHAIRMAN VAN LOON: Oh, good news, I
21	think.
22	MR. RICH: Which is, I contacted each of

the three parties to the prior CARP and secured by 1 email consent and orally in the case of one, confirmed 2 by email confirmations from voice mail messages for 3 the other two, consenting to providing the unredacted 4 form of the panel and register opinions as well as 5 allowing access to the Woodbury and Wildman testimony, 6 7 both written and direct as presented before the panel, subject to the protective order in this case. 8 advised Mr. Garrett of that. He is one of the few 9 people on the planet to physically has possession of 10 these unredacted materials. Appropriately under lock 11 and key he tells me, but has graciously agreed, since 12 13 we are variously coming back to New York sometime tomorrow to provide to my office by overnight mail, 14 copies of those materials so we will have them as of 15 16 this weekend for our preparation purposes.

CHAIRMAN VAN LOON: Outstanding.

MR. JOSEPH: And I would trust that Mr. Garrett will equally graciously send a copy by messenger over to our office, which should be fairly easy.

MR. GARRETT: I will consider it.

NEAL R. GROSS

17

18

19

20

21

(Laughter.) 1 Your gracious consideration 2 MR. JOSEPH: is earnestly solicited. 3 Let me just clarify one MR. GARRETT: 4 5 thing for the record, Your Honor. There is no There is only a 6 confidential registers report. 7 confidential CARP report. believe that the 8 registers report, as published in the Federal Register was unredacted. So the official document I will be 9 sending over is simply the CARP report, which as I had 10 11 indicated before, is already in your files, but for which they don't have access. 12 CHAIRMAN VAN LOON: And related to that, 13 and I guess it would be important perhaps to just 14 15 provide copies of those written confirmations. It was our understanding yesterday afternoon, the general 16 counsel's office here was going to issue a show cause 17 order, essentially saying that if they didn't get word 18 19 by the end of this week or Monday --Would you prefer that we 20 MR. RICH: communicate with general counsel's office indicating 21

it's not necessary? Or do you prefer that the Panel

do that at this point? 1 CHAIRMAN VAN LOON: It would be easiest, 2 I think, if you did that because I think that they 3 4 would want to see directly the written copies. I will take care of that. 5 MR. RICH: CHAIRMAN VAN LOON: Okay. Thank you very 6 much. 7 ARBITRATOR VON KANN: While we are on the 8 subject of gathering together materials, as you all 9 know, the CARP rules permit any member of the Panel to 10 11 call upon any party for the production of additional evidence at any time. This is not quite in that vein, 12 but I note that in reviewing the testimony of the 13 various experts in this case, the RIAA experts, 14 particularly I think Mr. Yerman in one case, referred 15 to a couple of legal authorities which he relied on 16 17 for his opinion, particularly the Georgia Pacific. copy of that was included as an exhibit to his 18 testimony so I didn't have to run to the library to 19 20 read it. In the case of William Fisher and Adam 21 Jaffe, that wasn't so. They referred to several legal 22

authorities but didn't attach them. I would ask if
you all could produce copies of those, it would save
us some time. There are two or three or four or five
cases referred to, and in a couple of instances,
provisions of the consent decree and the rate courts
and that kind of stuff. One can track it down. It is
in the public record, but it is just a lot easier to
have it plopped down in front of you.
MR. RICH: Will Monday be time enough?
ARBITRATOR VON KANN: Oh sure. Thank you.
MR. SCHECHTER: Would you be kind enough
to serve us?
CHAIRMAN VAN LOON: They'll graciously
consider it.
MR. RICH: We are going to meet on the
14th Street bridge.
CHAIRMAN VAN LOON: Excellent. Are there
any other administrative matters to be taken up?
We are to the half minute then on our
schedule, being done by those things by 9:15 each
morning.
Mr. Schechter, could I ask you to call

1	your first witness?
2	MR. SCHECHTER: Mr. Katz is on the stand.
3	CHAIRMAN VAN LOON: Could I ask, please,
4	the reporter to swear the witness.
5	Whereupon,
6	PAUL KATZ
7	was called as a witness, and after having first been
8	duly sworn, was examined and testified as follows:
9	DIRECT EXAMINATION
10	BY MR. SCHECHTER:
11	Q Mr. Katz, would you give us your full
12	name, please, and describe your present employment?
13	A My name is Paul Michael Katz. I am the
14	Senior Vice President for Business Affairs for Zomba
15	Enterprises, Inc. That is a music publishing company.
16	And for Zomba Recording Corporation, which is a record
17	company.
18	My duties cover the business and legal
19	affairs for both of those companies. Including on an
20	operational basis, signing artists, signing writers,
21	and such. I sit on the board of some of the Zomba
22	companies.

1	Q On page 1 of your testimony identifies
2	some of the songwriters, record labels, and performing
3	artists that are associated with the publishing
4	business and the record business. I do not want you
5	to repeat those, but that is reflected on page 1 of
6	your testimony, is it not?
7	A That is correct.
8	Q Okay. Thank you. Could you briefly
9	describe the purpose of your testimony today?
10	A The purpose of my testimony is just to
11	give a general view of the music publishing industry,
12	and then to contrast it with the recording industry,
13	which is a far greater larger and more complex
14	business than the music publishing business.
15	Q Give us a sense of the size and structure
16	of the music publishing business, please.
17	A The music publishing business in the
18	United States is fairly scattered. There are tens of
19	thousands of small music publishers, the kind of mom
20	and pop operations, where you would have one or two
21	individuals looking after a small number of songs.
22	There are also a few larger music publishers, such as

EMI Music Publishing and Warner Chapel, which are the 1 two largest, I believe. They will have thousands or 2 tens of thousands, or even hundreds of thousands of 3 4 copyrights. 5 These music publishing businesses will have one writer sign to them, or may have in my case, 6 7 maybe a hundred or so writers signed to them. By contrast, the recording industry tends 8 9 to be more consolidated. You have the five major companies and the larger independents who tend to be 10 the majority of the record market. These companies 11 12 may have several hundred recording artists signed to 13 them. I think the reason for that is that the 14 investment by a record company and the functions that 15 record company performs, such 16 as marketing, 17 promotion, distribution and the like, are more complex 18 and just need more investment to tie money, et cetera, 19 than a music publisher does. Turn briefly to the table of contents of 20 21 your testimony. Would you identify or just quickly 22 list for us the five functions that a music publisher performs?

A Yes. There is basically in my view, five functions that a music publisher performs, which I have got listed as acquiring the song, pitching the song, administering the song, licensing the song, collecting and distributing. My role as to contrast that I guess with a record company if you had the same index with a record company, there would be many more categories because they perform many more functions than a music publisher, which I have alluded to before, such as recording an artist, manufacturing the parts from the recording, making videos, marketing, promotion, sale, distribution.

Q Flipping back to page 3, could you just summarize your testimony please on the function of acquiring a song?

A Yes. The main objective of a music publisher is to acquire songs that it can then go out and pitch to a record label primarily. That is where the main source of income comes from. So a music publisher will sign contract with a writer, pay in advance to that writer, and split the summarizing

WASHINGTON, D.C. 20005-3701

revenues with the writer. 1 Just again to contrast it, basically a 2 record company also pays advances to its recording 3 artists. But those advances aren't just a fiscal cash 4 record company will invest in the 5 Α recording of the actual album itself, which can cost 6 hundreds of thousands to well in excess of a million 7 dollars to record. It will also invest in making 8 9 promotional videos, the videos you might see on MTV which is a huge outlet for promoting the record, and 10 thereby dragging along the composition. 11 Those can 12 cost actually even more than the record, I mean 13 millions of dollars. It's very excessive these days. Then the promotion onto radio can also be 14 a very expensive task. All those are grouped as 15 advances to artists. 16 17 0 Focusing on the cash advance for a minute, 18 could you compare generally speaking --19 Can I just -- I'm sorry. 20 MR. GARRETT: Don't interrupt the witness. 21 (Laughter.)

THE WITNESS:

22

I just wanted to make a

point, if I may. It is very interesting, if you are 1 a music publisher and you have a song, I can have that 2 song recorded numerous times. Sometimes 3 successful and sometimes it's not successful, but I 4 always get my second shot if it is a decent song. 5 If you are a record company and you are an 6 artist, it is much more kind of I don't say a one-hit 7 wonder, but you get your shot with that particular 8 song, and you put all the investment in. If it fails, 9 If it is successful, which is 10 you are in trouble. great, then you do well. 11 I wanted to give an example of the song --12 there's a song which is a very big worldwide hit 13 14 called "Torn," by an artist whose name I am probably going to mispronounce, but Natalie Imbriglio, I think 15 16 it is, from RCA Records in Australia. CHAIRMAN VAN LOON: What was the name of 17 18 the song? Torn, T-O-R-N, very nice 19 THE WITNESS: 20 kind of mid-tempo ballad. Basically that song, when she had the hit, had been recorded five times. The 21 first four records that came out never got above the 22

radar. She then had the worldwide hit with that. But the publisher obviously recovered some money on the first four, and did very well on the fifth. But they were up to bat again. They had their shot. I think that is a big difference here between the publishers and the record industry.

CHAIRMAN VAN LOON: In this instance, the first four were by four separate other artists?

THE WITNESS: Correct.

ARBITRATOR VON KANN: Can I ask a question that that prompts? If a particular record company had acquired the right to have artists pay perform Torn and it didn't do very well, might that same record company think gee, we've got Joe over here. Joe might do a great job with Torn. Is it uncommon for the same record company to have another artist take a shot at a song or do we get into sort of rivalries between their artists? So if Warner Brothers has one shot, they better pick their right person because they can't use anybody else on their fleet to do that song again.

THE WITNESS: It's interesting, but that does happen occasionally. But it is much more likely

1	to happen if it is a big hit. So if you took a
2	Natalie Imbriglio example, which is a pop song, you
3	might have somebody in the country music division say,
4	"You know what? This is a different type of genre
5	audience. It's a great song. Let's re-record it for
6	one of our big artists on the country side." It
7	happens more in kind of the high end than the low end.
8	It could happen occasionally if everyone believes it
9	is a good song.
10	ARBITRATOR VON KANN: And that would
11	require I guess again paying for the music publisher's
12	royalty rights if they took a second crack with the
13	second recording?
14	THE WITNESS: If you start again, yes,
15	absolutely.
16	ARBITRATOR VON KANN: And if you don't pay
17	one shot, and let's see if we can get six of our
18	artists to take a crack of this. It is a separate
19	royalty payment each time the song is the subject of
20	another recording?
21	THE WITNESS: Exactly.
22	ARBITRATOR GULIN: Of course maybe even

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

more significantly, it's another round of investment.

MTVs of

THE WITNESS: Yes. And if you are a record company, you have really got to believe in the song that failed the first time to spend a million dollars on a promotional video, thinking that it is going to have an impact at radio when radio or the world already reiected that the have particular recording.

BY MR. SCHECHTER:

Q Could you continue and describe for us the function of pitching a song, please?

A music publisher's main source of Α income derives from a recording by an artist. that recording is done, they can get income from different streams and performance or reproduction. But if you are a music publisher, you have got to get your song recorded, otherwise it doesn't actually have much worth.

So what a music publisher will do will demo the song, which usually with the wonderful technologies we have all got and I guess we discussing in part this morning, it is very cheap to do now. The entry point to do that is technically very simple.

Then he will take the demo and he will

pitch it to an A&R guy, who is the record company or the manager of an artist, hoping that they will feel that it's right for their particular artist.

Once the record company then decides to record that song, and it is a big commitment because you have got to decide whether it is going to be a single, an album track, whether you are going to do a promotional video for it. You have to be pretty sure. Then the record company will then say okay, let's pay X hundred thousand dollar advance to the hot producer of the day. Then let's pay the recording costs, which in our industry sometimes go over what they should be. If it's a single, let's go and do the promotional video. Let's put our marketing apparatus in TV spots or print into gear. So you have got to think it through really to do that.

Q How about administering the song?

A This is a large part of what a good publisher does, in my view, which is basically you

a valuable piece which is have the sonq, 1 intellectual property. Not only that, for the writer 2 It's their livelihood. is a source of income. 3 their creative output. What the publisher needs to do 4 is basically register that with various bodies. 5 A good publisher might be able to register 6 it with the Copyright Office, although I believe it's 7 8 not technically absolutely necessary these days, but

> it gives you certain rights in terms of infringements. It will also register the song with the performing rights bodies, ASCAP and BMI and SESAC, music rights, to license it for public performance.

> Then it will also license, this is coming back to your point, each individual record that comes out, it will then give a mechanical license, whereby the right for the record company to gives manufacture and distribute basically the records.

> Then if that record is a hit worldwide, it will then advise its sub-publisher in each particular country that the record is coming out, and please do the same thing in your territory.

> > By contrast, that is a small part of a

NEAL R. GROSS

9

10

11

12

13

14

15

16

17

18

19

2.0

21

record company's infrastructure and business, an important one, to liaise with the publishers. But a record company is more thinking about do we record the song, did we get the video right, can we get it on the radio, how can we really get it into the public consciousness and sell records.

Q How about licensing a song? Could you briefly describe that function?

A Actually, I think I was a little bit ahead of myself. But part of the licensing function is that mechanical license that I just referred to before, for the collection of the mechanical income.

There is also to an extent, synchronization license, which is where the song is synchronized to a visual image. It may be in a movie that you see or it may be on a TV commercial. Again, it's a nice piece of income, but it's not the most significant for a music publisher. Again, that often derives from the fact you have had a hit record. So the master itself gets licensed for that particular use, and you as a publisher again get the benefit of it, provided, if I put my publishing hat on here, say

it's a good song. It has to be a good song to be a

hit.

And how about collecting the distributing

A The collection and distribution of royalties is very important if you are a music publisher because you have got these various sources of income coming in from performance, from sheet music, from mechanicals. You have to ensure that the people you are dealing with are honorable people, and that you can collect them and make sure they are correct. Then once you do, you then on anything between a quarterly or semi-annual basis, pay them across to the writer.

Normally, the writer usually gets around 75 percent of the income that comes into the publisher. The equivalent with performance, although it comes from the publisher and the performing rights society. Whereas a recording artist will basically get less than that, although dollar-wise it could be more, but that's again because the significant investment of the record company and what it does.

royalties?

1 | There's different economics involved.

Q Finally, on table 1 on page 7 of your testimony, if you could flip to that, please. Without going through each of the numbers, could you just basically summarize what's in that table?

A That is an extract from a report by the National Music Publishers Association, which is the trade body for the music publishers in the United States. That shows for 1998, which I believe is the latest year its available in figures, or it certainly was when I was doing my testimony. The total amount of income that they predict or believe was collected for that particular period of time, which is broken down into three categories: performance income, which is obviously when you hear it on the radio and TV, et cetera; mechanical income from the reproduction of the recording; and to a lesser extent, sheet music.

By contrast, if I could, I think if you were going to take this table and look to the record business one, and again I haven't seen a particular table, but I think that would be considerably larger as a total. I also think a big difference would be

1	that with the record companies, there would be
2	categories in here, but there would be really one big
3	category, which is the sale of CD recordings to the
4	public in various forms. That is by far the main
5	source of income for the record industry. I think
6	that is a big contrast that I would like to highlight.
7	ARBITRATOR VON KANN: That is essentially
8	the first two totals, the 697 million and the 641
9	million together?
10	THE WITNESS: No. I think they are
11	different categories. In other words, I believe that
12	if you had the record one, you wouldn't have
13	performance or reproduction. You would have the line
14	that's at sales, and 90 percent of the record company
15	income would be in that one category. That might be,
16	depending on how you view it, that might be \$10
17	billion, for example.
18	MR. STEINTHAL: Ninety?
19	MR. SCHECHTER: I have no further
20	questions. If the Panel has further questions?
21	ARBITRATOR VON KANN: Am I reading this
22	table 1 correct? It is a little early in the morning

1	to get all my zeros straight, but to indicate that the
2	U.S. music publishing industry as a whole in 1998 had
3	income of about \$1.5 billion?
4	THE WITNESS: That is correct.
5	ARBITRATOR VON KANN: Which would contrast
6	with some evidence we saw I think in Ms. McLaughlin's
7	testimony of about 24 or 28? I have got to go back
8	and look at her numbers, but maybe it was even larger,
9	billion dollars for that year for the recording
10	industry. Let me just check one second. Does that
11	sound right to you, that the now is this revenue or
12	net income? Is it income after expenses or is this
13	THE WITNESS: I believe this would be top
14	line.
15	ARBITRATOR VON KANN: Revenue.
16	THE WITNESS: I think the record one, I
17	mean I wasn't aware of the testimony, but I think
18	ARBITRATOR VON KANN: Does 20 times that
19	number sound right to you?
20	THE WITNESS: It sounds a bit high to me
21	to be honest, but significantly, eight to ten. I
22	don't know what is involved in the number.

1	CHAIRMAN VAN LOON: Records are \$14
2	billion, 1.1 billion units and 14 point something
3	billion dollars.
4	THE WITNESS: Yes, eight to ten sounds.
5	MR. SCHECHTER: If I might say, that 14
6	was at the retail level, not at the record company
7	CHAIRMAN VAN LOON: Over 18 months also.
8	MR. SCHECHTER: I was referring back to
9	the chart, the information in Ms. Rosen's testimony,
10	which had a figure of I believe 14.3. I believe that
11	that was established at the retail level, this price,
12	that included the percentage for the retailer, which
13	as I recall the testimony was, was roughly 40 percent
14	of that number. So the number to the record companies
15	would be about nine-plus billion dollars.
16	CHAIRMAN VAN LOON: 9.5 she used.
17	MR. SCHECHTER: Yes, I believe that's
18	right.
19	MR. GARRETT: I think what you are
20	referring to, Your Honor, is page 6 of Ms. Rosen's
21	testimony, which I basically submitted an exhibit that
22	underlies that. That exhibit is I think 105 DP.
19 20	MR. GARRETT: I think what you are referring to, Your Honor, is page 6 of Ms. Rosen's

Then in Ms. McLaughlin, her testimony was 1 2 focused on the majors, the five majors. I will go back and ARBITRATOR VON KANN: 3 Obviously it's in the record. But does it look. 4 sound right to you, that the annual revenue of the 5 recording industry is on the order of six to eight to 6 7 ten times that of the music publishing industry? If you were looking like-8 THE WITNESS: 9 with-like top line revenues of the record industry, you know the record companies and the publishers, I 10 11 would say, yes, probably around that. KANN: The other 12 ARBITRATOR VON interesting thing that you may or may not be prepared 13 to speak to is bottom line. Because you have 14 indicated, I think, that cost, expenses of the music 15 publishing business are much less. 16 17 THE WITNESS: Correct. 18 ARBITRATOR VON KANN: So you could conceivably have a much smaller top line, but because 19 20 it's not nearly as expensive to do what you do, at the end of the day your industry could actually have a 21 substantially larger profit or a larger gross margin, 22

1	as they sometimes say, than the record industry. They
2	might have eight or ten times the income, but if you
3	offset the expenses, at the end of the day, guess
4	what, it's better to be in the publishing business
5	than the recording business.
6	Do you have any sense at all, and don't go
7	beyond what you know, or is there somebody coming
8	MR. SCHECHTER: Our next witness will
9	speak to exactly this topic.
10	ARBITRATOR VON KANN: That's fine.
11	BY MR. SCHECHTER:
12	Q If you know on an industry-wide.
13	A No. I honestly don't know.
14	CHAIRMAN VAN LOON: I think we are then
15	prepared to begin the cross.
16	MR. STEINTHAL: Before doing that, is the
17	next witness in the courtroom? Could we ask that he
18	be excused for purposes of the cross examination of
19	this witness since it's on the same subject matter?
20	MR. SCHECHTER: We haven't done that
21	before. Ms. Rosen was here for Mr. Sherman's
22	testimony.

1	MR. STEINTHAL: We had no problem with
2	that.
3	ARBITRATOR GULIN: Is there a reason not
4	to do it?
5	MR. GARRETT: I assume the same rule then
6	will be applied since they have a number of different
7	webcaster witnesses, we would ask then that none of
8	their webcaster witnesses be present during the
9	testimony.
10	MR. STEINTHAL: We have no problem with
11	that. I think the experts are present during some of
12	the other testimony and need to be to hear what the
13	testimony is and react to it. But as to the fact
14	witnesses, we have no problem with them not being
15	present when other fact witnesses on the same subject
16	are being examined.
17	MR. SCHECHTER: That's fair.
18	CHAIRMAN VAN LOON: So the witnesses are
19	the lucky ones that get to go some place where there
20	is a window and fresh air, and we continue.
21	CROSS EXAMINATION
22	BY MR. STEINTHAL:

1	Q Good morning, Mr. Katz.
2	A Good morning.
3	Q A couple things raised by your testimony
4	orally that were not specifically in your writter
5	testimony that I want to ask you about to begin with.
6	You mentioned that there is more concentration in the
7	label community than there is in the publisher
8	community. Do you remember saying that?
9	A Yes.
LO	Q It is still the truth, is it not, that the
L1	five major publishers, BMI, Warner Chapel, Universal,
L2	Sony, and BMG, control over 50 percent of the market
L3	share in the publishing business using radio play
L4	statistics, for example?
L5	A I don't know that.
L6	Q You don't know one way or the other?
L7	A I don't know whether that is the case. I
L8	do know that the music the five, the major music
L9	publishers control an amount in the market that is
20	substantial. But I do know that that's nowhere near
21	the record companies, which in my estimation would
22	control probably 90 percent of the record industry.

1	Q So it wouldn't surprise you if those five
2	same major companies, BMI, Warner Chapel, Warner Music
3	Group, Universal, Sony, and BMG were all controlling
4	90 percent of the label marketshare, would control 55
5	to 60 percent of the publishing market share?
6	A I would say that they have a substantial
7	market share. I couldn't tell you if it's 30 percent
8	or if it's 40, or it's the figure that you just gave.
9	I really do not know.
10	Q In response to Judge Von Kann's questions,
11	you talked about the phenomenon of doing a third,
12	fourth, or fifth shot at a certain song, and sometimes
13	it becoming successful, right? Let me ask you this
14	about the way the marketplace works that way. When a
15	label does a cover, as it's called, and a cover is
16	when a label makes a recording of a previously
17	published song, right?
18	A That is correct. Yes.
19	Q So that if I'm a label, and for example,
20	Frank Sinatra has done a huge hit of whether it be New
21	York, New York or some other ballad that has done
22	really, really well, and you have an up-and-coming

1	1
1	star that you think for Zomba Record Company could do
2	a fantastic remake of that song, you might devote some
3	attention to that and make a cover of that song.
4	Right?
5	A Absolutely, we may do under certain
6	circumstances. Yes.
7	Q In that situation, you have the right as
8	a user, if the label is the user of the composition,
9	to make a copy of that song and just pay the statutory
10	rate for the composition. Right?
11	A For a use. To sell the record to the
12	public versus say a synchronization use where you
13	don't have that right. But in the first instance, as
14	I understand the American law to be, yes. I believe
15	that is the case.
16	Q So no matter how much success that song
17	has generated for another publisher, that publisher
18	can't charge you more than the compulsory rate if you
19	as a label want to go out and make a cover of that
20	song. Right?
21	A In the selling the CD, that is correct in
22	the U.S., as long as it is the same exact length of

1	song. Obviously if the song is longer in your cover,
2	you pay more.
3	Q That is good for you as a user, isn't it?
4	As a label you don't have to worry about the publisher
5	charging you more because they don't want anyone else
6	to make a cover of their very successful song. Right?
7	A I think it's interesting, because as a
8	publisher I see that my first fundamental right is
9	what's called I think the first use. I think I have
LO	the choice as a publisher to decide where that song is
L1	first recorded. So what happens, and this is an
L2	interesting situation, you may get two very
L3	significant artists who want to record your song.
L4	Then you have to make a choice of who you want to go
L5	with.
L6	Once that recording has been made, after
L7	that anyone can record that song, yes.
L8	Q You distinguished of course the situation
L9	of sync licenses, where the publisher has a voluntary
20	and exclusive right to grant the synchronization of
21	its composition into, for example, a movie?
22	A Yes.

1	Q There, you can ask for a certain fee. If
2	the user doesn't want to pay that fee, then if you
3	don't come to agreement, the user can't use it and
4	that's it.
5	A That is correct. That is absolutely
6	correct, yes. Because I think with the mechanical
7	license and the compulsory license it is an important
8	thing as a music publisher to get that money. But if
9	you are a record company, it is one of the huge number
10	of costs that you've got in terms of your overall
11	business. So it's basically just one of a number of
12	costs. If you are a publisher, that is your whole
13	income basically.
14	Q I am confused. Let's say I am a producer
15	of a movie and I want to use a popular song as part of
16	the soundtrack of the movie. I have got to go, if I
17	want to use the actual recording, I have got to go to
18	let's use a Zomba song. I have got to go to you
19	wearing your label hat.
20	A Yes.
21	Q To get a master use license. Of course
22	and that the master use license is the jargon for the

1	reproduction right to synchronize a master into a
2	movie, is it not?
3	A Exactly.
4	Q I also, if I'm the producer, have to go to
5	you wearing your publisher hat if you happen to own
6	the musical work rights to the underlying song in that
7	sound recording, to get what's called a sync right.
8	Right?
9	A That's correct. You go to the music
10	publisher, yes.
11	Q So in that negotiation, both the publisher
12	owning the musical work and the label owning the sound
13	recording are equally not under any constraints of
14	compulsory licensing. They either license or don't
15	license based on whether or not they can come to an
16	agreement with the producer over price for that
17	license. Right?
18	A That is correct. Usually the record
19	company has to give permission first, and then the
20	publisher will give permission after. But it is
21	totally voluntary.
22	Q In that situation, both the label and the

1	publisher are trying to do the same thing, which is
2	drive whatever license fee they can based on the
3	marketplace in a voluntary negotiation setting. Right?
4	A Yes. That is correct. Based upon the
5	market rate.
6	Q Now you mentioned that 75 percent of the
7	performing rights distributions, as I heard you, and
8	it struck me because it didn't jive with what I
9	thought I understood, that 75 percent of the
10	performing rights distributions go to the songwriter,
11	and 25 percent to the publisher?
12	A Yes. Actually income. In other words, if
13	a dollar comes in, if I could use that as an example,
14	and say that dollar is I'll start off with
15	mechanical income, is derived from the sale of the
16	record, that comes in. Usually the split on that
17	income is 25 cents to the music publisher and 75 cents
18	to the writer.
19	Q Is that on the synchronization license
20	fee?
21	A No. That's on mechanical royalties from
22	the sale of records. That is one category.

1	The second category would be performance
2	income. What normally happens there is if it's a
3	license use by ASCAP, the performing rights society,
4	what ASCAP will do, if the dollar comes in they will
5	send 50 cents of it to the music publisher, and 50
6	cents of it directly to the writer. As a music
7	publisher, you can't take performance income and use
8	it to recoup your advances. But as a music publisher,
9	what you do with your 50 cents is you take half of it,
LO	25 cents, and you pay it back to the writer so the
L1	writer ends up with the same 75 cents on the dollar
L2	that he gets on the mechanical side.
L3	Q I am not sure I follow that. So that for
L4	the dollar distributed by the PRO, ASCAP or BMI, 50
L5	cents goes to the publisher, and 50 cents goes to the
16	writer. Right?
L7	A That is correct.
L8	Q Are you saying something then happens with
L9	the 50 cents the publisher collected?
20	A Yes. Half of that then gets credited to
21	the writer.
,,	O Credited to the writer? Meaning credited

1	to some sort of account?
2	A It gets credited to the writer's royalty
3	account basically, yes.
4	Q Is this with respect to all writers or
5	just those writers that control their publishing?
6	A I would say the vast majority of writers
7	that we have, whether they control their publishing or
8	not, that applies in the pop world, absolutely.
9	Q All right. Let me move onto the subject
10	that I wanted to talk to you about based on your
11	direct testimony in writing.
12	ARBITRATOR VON KANN: You have been
13	speaking about a writer singular.
14	THE WITNESS: Yes.
15	ARBITRATOR VON KANN: I guess in a vast
16	majority of instances now there is a single person who
17	writes most of the words in the music. But in the
18	good old days, Gilbert wrote one part and Sullivan
19	wrote the other. I wonder if there are multiple
20	people, is the division of the royalty a matter of
21	contract among them or is there some other way that we
22	decide, the lyricist and the music writer, who gets

1	what portion.
2	THE WITNESS: We as the publisher take the
3	view that whatever the percentage split agreed between
4	the lyricist and the composer, and there's often
5	numerous composers and numerous lyricists, we'll abide
6	by that.
7	ARBITRATOR VON KANN: That is just
8	basically a matter of their working out a deal among
9	themselves?
10	THE WITNESS: Yes.
11	ARBITRATOR VON KANN: Okay.
12	BY MR. STEINTHAL:
13	Q You talked in your direct testimony, Mr.
14	Katz, as your predecessors on being called by the
15	recording industry did beforehand, about the various
16	costs and risks associated with running a record
17	company, I think to use your literal words in your
18	statement. You said it involves manufacturing.
19	Correct?
20	A Yes.
21	Q Distribution?
22	A Yes.

1	Q	Promotion?
2	A	Yes.
3	Q	Marketing?
4	A	Yes.
5	Q	Sales?
б	A	Yes.
7	Q	Finding and developing talent?
8	A	Yes.
9	Q	Creating the sound recording and creating
10	the music vi	deo, among other things. Right?
11	A	Correct.
12	Q	And you talked about how costly and risky
13	the sound re	ecording business is, wearing your label
14	hat there.	Right?
15	A	Correct.
16	Q	I just want to be clear about a couple of
17	things. The	ese costs all relate, do they not, to the
18	business of	manufacturing, distributing, and selling
19	physical sou	and recordings.
20	A	Just to amplify, if I could. Do you mean
21	that the cos	ts like the recording costs, you have a CD
22	that result:	s from that, and then you sell the CD.

That's what you mean?

Q Yes. All the costs that you describe are costs that are inherent in the business of manufacturing, distributing, and selling physical sound recordings. Right?

A Primarily, yes.

Q Those types of costs have been the same nature of the costs that the legal community has incurred for decades in the sale, manufacture, and distribution of sound recordings?

A No. I think the big difference and which I think has been something that has been not good for the record industry, in my view, in one sense, and great in anther sense, has been the promotional videos. They only, tonight, for example, in New York, is MTV, which is the monopoly in that world, the MTV channel, it's their 20th anniversary party. Basically MTV is how you get to the audience, especially with the younger pop groups. We spend considerably more on our pop groups promotional videos than we do on the recording. I think that has made it so much more uneconomical than it used to be to actually be in the

1	record business. So I actually think it has changed
2	a lot in the last 20 years.
3	Q Well it has changed in respect that the
4	costs of producing videos are an additional cost for
5	the sale, manufacture and distribution of physical
6	sound recordings than you used to have. Right?
7	A It is an additional cost. It's part of
8	the process, but it is an additional cost, yes.
9	Q Indeed, as you say it is quite costly.
10	Let me ask you this question. Zomba doesn't charge
11	MTV for the right to exhibit the audio visual works
12	called music videos on MTV, does it?
13	A When you say Zomba, do you mean the record
14	company or the music publishing company?
15	Q The record company.
16	A The record company is delighted that MTV
17	shows our music and our promotional videos, and
18	doesn't charge. I think if you could turn back time,
19	to quote a song, I think that was a mistake. I think
20	there should have been payment, personally, for that.
21	But at the moment, it doesn't charge. Although I
22	believe, and I am not aware of specific details. I do

1	believe that MTV does make certain payments to certain
2	major record labels for the right to show videos.
3	That is my understanding.
4	Q You don't have personal knowledge of that,
5	do you?
6	A I don't at the present time, but I do know
7	that we had one of those agreements in the past with
8	MTV.
9	Q We, who?
10	A Jive Records.
11	Q Was that for international distribution?
12	A That was for the U.S.
13	Q You are sure of that?
14	A I am pretty sure of it, yes.
15	Q You are saying that under oath. You know
16	that Jive Records had a deal whereby they were paid
17	I want to make sure the witness knows what he is
18	talking about.
19	A I take very seriously my responsibilities
20	here, and I am trying to do my best. To the best of
21	my knowledge, and I haven't looked at this agreement
22	for maybe ten years, I thought it was a U.S.

At this moment in time, that is what I 1 agreement. believe it was. 2 CHAIRMAN VAN LOON: That is your current 3 recollection? 4 5 THE WITNESS: That is absolutely my current recollection. 6 7 BY MR. STEINTHAL: 8 to Zomba right now, you as delivering the videos that are costly for you to 9 produce to MTV without charge because the promotional 10 value that you believe air play on MTV will have in 11 the sale of the physical CDs and sound recordings. 12 13 Right? 14 It is very valuable as a tool. Now if we went through that litany of 15 Q costs, and when I asked you whether it was those same 16 17 type of costs were incurred and have been incurred in the sale and distribution of sound recordings over the 18 last 20 years, you identified the music video piece as 19 20 being a little bit different today than before. otherwise, including music videos in it, other than 21 22 that change, are these types of costs the same types

	of costs that tabels have incurred over time for
2	purposes of the business of manufacturing and selling
3	sound recordings?
4	A The types of costs are. The emphasis may
5	change a little bit. For example, with everything
6	that is going on with the web and games and that type
7	of stuff, you may have to put more resources in say
8	advertising than you used to basically. But the
9	manufacturing part of it is the same. Albums I think
10	have got much more costly to produce since I have been
11	in the business. There's categories. I would say
12	actually the album cost is much higher than it used to
13	be.
14	Q But it's the same category that existed
15	before. It has just gotten more costly?
16	A Yes. The new categories tend to be
17	promotional videos the last 20 years, and obviously
18	web in the last five, marketing on the web.
19	Q How much of your budget right now is
20	marketing on the web?
21	A I don't know.
22	Q Not very much?

1	A I don't know.
2	Q Now these types of costs that you have
3	identified that underlie the very costly and risky
4	business of sale and manufacture of physical sound
5	recordings, those were costs that you have incurred
6	even before there was something called web casting.
7	Right?
8	A In the main, absolutely. Yes.
9	Q So tomorrow, let's assume that webcasting
10	was either made illegal or because of license demands,
11	it became so cost prohibitive that the webcasting
12	industry folded its tent and didn't' do it any more.
13	You would incur all the same types of costs that you
14	were talking about anyway for purposes of selling
15	physical sound recordings. Right?
16	A I would like to respond to that.
17	Q A yes or no would do fine.
18	A (No response.)
19	MR. SCHECHTER: Let him answer the
20	question.
21	MR. STEINTHAL: With all due respect, I
22	think a yes or no occasionally on cross examination

could be called for. 1 CHAIRMAN VAN LOON: I think with all due 2 respect we have been allowing the witnesses to express 3 themselves. He apparently would prefer to elaborate. 4 I would like to be more 5 THE WITNESS: detailed if I could. 6 We like you to be 7 CHAIRMAN VAN LOON: heard. 8 9 THE WITNESS: Thank you. I think the webcasting is a new development you have to embrace. 10 11 But where I think the costs if it went away, I don't 12 know, but that's a hypothetical, but probably they 13 would be pretty similar to where we are now. 14 My whole concern as a record company and as a music publisher is that with the whole advent of 15 the web and with everything that is going on in terms 16 17 of subscription services, that that whole manufacturing of CDs which is where we as a record 18 19 industry make our money, that that will be displaced 20 because of these new technological developments, and main source of income to the record 21 that the companies, if you are taking a 10 to 15 year view, may 22

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

well be performance income.

If that performance income rate isn't an appropriate and fair one for the record industry and the music publishing industry, that that will cause such a problem in terms of the economics for both of that, that they won't be able to invest in talent and you won't be able to nurture your artists and your That's really where I see it is music writers. problematic, and there has to be the fair rate.

BY MR. STEINTHAL:

Let's parse through some of the things 0 said. First of all, when you that you focusing subscription services, you were on subscription services like Music Net that downloads of sound recordings on a timed out basis Right? available to consumers.

No, I wasn't actually. I was thinking of subscription services where you can basically, you listen to the music somewhat like a radio or you can even choose the type of music, a Beatles channel or In my view, you are going to get a different mix of what the public want to hear and how

NEAL R. GROSS

1	they want to hear it. You may have some CDs. You may
2	have downloads, as the gentleman was saying.
3	But I think a lot of it is going to be
4	just listening on the web with portable devices. I
5	don't think you are going to get as many downloads.
6	We have had trials of downloads as a record label that
7	haven't been very successful. So that is why I think
8	the performance income point is relevant.
9	Q Do you know that all the people on this
10	side of the room are webcasting pursuant to the
11	strictures of the section 112 and 114 statutory
12	license?
13	A Yes. There's a statutory license, I
14	realize that. Yes.
15	Q You do know that to provide music on
16	demand, to stream music on demand or provide downloads
17	of any sort, you can't be on this side of the table
18	and get a fee set in this proceeding. Right?
19	A Yes. I understand that.
20	Q Now you said that you were worried long-
21	term because of the fear that there would be
22	displacement, I think was your word. I take it by

1.	that word you mean that because people would get so
2	much of what they want, either in the form of
3	downloads or music essentially on demand, that they
4	will just listen to what's available through those
5	subscription services rather than going out and buying
6	albums. Right?
7	A I believe that yes, there may be a
8	changing buying habit. Absolutely.
9	Q That's what you meant by displacement.
10	A Displacement, yes. There won't be the CD
11	sales.
12	Q Now I think you said precisely you were
13	looking at a 10 to 15 year view in that respect,
14	right?
15	A Yes. I think if you take a longer term
16	view. I don't think these things happen overnight.
17	Q Let's focus on what this case is all
18	about. You would agree with me, would you not, that
19	none of the services that are seeking a fee setting in
20	this case can provide downloads or provide
21	subscription on demand radio. Right?
22	A It depends on your definition of on-

demand, frankly, because I think there is a grey area 1 as to what is an on-demand service. Depending where 2 that ends up, some of those what I consider may well 3 be quasi on-demand service, may go into the statutory 4 5 license basically. But even if it's not on demand in the 6 sense I believe that you mean it, there are genres of 7 music that one can listen to that fall within these 8 proceedings, the rock one, the hip hop station, and 9 10 even then there are categories potentially of what is hip hop and which year you want, and what type of 11 12 artist you want. So I think there is a real possibility 13 that there will be displacement, even within the 14 statutory framework, because I think the consumer will 15 want that and we have to go with the consumer. 16 Putting aside possibilities, and talking 17 0 about any evidence, are you aware of any evidence that 18 the activities of the webcasters, consistent with 19 2.0 section 112 and 114, have actually resulted in displacement of album sales? 21

I haven't looked for that and I am not

22

1	aware of that. It's not something I would forward in
2	my area.
3	Q Do you have any concern about whether
4	broadcast radio, for example, displaces record sales?
5	A You mean over the air, terrestrial?
6	Q Yes.
7	A I think it is what it is, and you have to
8	just abide by it. I actually do believe to a much
9	lesser extent because of the wonderful technology of
10	the web, I believe to a lesser extent it may do, but
11	nowhere near the possibilities the web offers.
12	Q What about retransmissions of the same
13	broadcast signals on the Internet? You don't think
14	that really displaces record sales, do you?
15	A That is an interesting question because if
16	I'm right, I'm not very technical, but if I'm right
17	that goes beyond a much bigger range of physical area
18	than a radio station. I think maybe there's a slight
19	chance of doing that, but I think it is a question of
20	degrees, in that area.
21	Q But of course based on what you said, one
22	of the major costs that you have, wearing your label

1	hat, is promotion on the radio and promotion on MTV.
2	I guess the net balancing of your company is that you
3	believe the promotional benefits greatly outweigh the
4	displacement effect or else you wouldn't do that.
5	A On balance, yes.
6	Q Going back to the question that I asked
7	you before you started down this path, I asked you
8	whether if we all folded our tents tomorrow because it
9	became too costly or illegal or whatever it was to
10	webcast, isn't the reality, Mr. Katz, that all the
11	categories of costs that you have described that
12	underlie the costs you have in running a business, the
13	design of which is to sell records, would still be
14	incurred?
15	A In the main.
16	Q In fact, with respect to any of my
17	clients' use of your sound recordings on an Internet
18	radio station, the fact is that our use of those sound
19	recordings doesn't result in any incremental cost to
20	you at all.
21	A It is a very small incremental cost, very
22	small. I am not so concerned with the cost. I think

it is a wonderful thing, the webcasting and the Internet. I am concerned with the displacement of CDs and the performing right being a fair remuneration for the benefits that we all get, us in terms of promotion, as you put it, and you in terms of building up a business.

Q I am with you on that. I just want to be clear between the difference between costs and revenue streams. As a matter of cost, the webcaster's use of sound recordings as part of their business in webcasting results in no tangible incremental increase in your cost, does it?

A Actually that is not quite correct. If I could expand a little bit. For example, I look after the business affairs and legal for Zomba. We have hired a full-time Internet attorney. We spent hundreds of thousands of dollars in costs going to outside lawfirms to deal with the whole new Internet world. We have got a new paralegal, secretaries. We have a whole department that does new media, that has marketing people, business development people in it. So there are actual infrastructure costs in terms of

1	our business, but we are embracing it. It is not that
2	we are saying it's a bad thing, but we are saying that
3	you have to ramp up for this new possibility.
4	Q But in fact, the legal costs, for example,
5	would be incurred as you and I both know, in a
6	transaction like between Music Net on the one hand and
7	Zomba on the other, whereby Zomba licenses product for
8	a subscription service that doesn't comply with
9	section 112 and 114.
10	A There's some of the costs. I mean we
11	spent several million dollars in litigation fees with
12	MP3.com, who we are in court with at the moment, which
13	obviously is an entirely different case from your own
14	because they are copyright infringers. But in the
15	legitimate business area, we have spent in terms of
16	marketing and business, we have spent money.
17	Q Other than that, and that you would agree
18	is a relatively small cost within the overall costs
19	that you identified as incurring for the sale and
20	distribution of records, there is no incremental cost,
21	is there?
22	A As a percentage it's small. In dollars,

1	it's real dollars if you are an independent and you
2	are building your business.
3	Q Can you identify any specific costs that
4	you have incurred at Zomba as a label associated with
5	the licensing of any of our clients for rights
6	associated with the section 112 or section 114
7	license? Even a dollar?
8	A You know, I don't think I am
9	uncomfortable. I am kind of uncomfortable with that
10	little bit.
11	MR. SCHECHTER: Your Honor, may I speak to
12	that? I am not sure what the basis would be.
13	CHAIRMAN VAN LOON: Let's hear.
14	MR. SCHECHTER: Zomba is a private
15	business in contrast to the public companies that have
16	testified. There is not a single number about Zomba's
17	business in Mr. Katz's testimony. That is on purpose.
18	They are not required to disclose such information
19	under public circumstances, and they don't.
20	We would submit that keeping within that
21	realm, he is here to speak about the industry. He is
22	not here speaking about Zomba's dollars and cents.

1	I would note that in other contexts, the
2	webcasters spoke about their businesses in financial
3	terms, incurring losses. We sought discovery on that
4	information. Our motion to compel was denied.
5	This witness is not speaking about the
6	economics of Zomba. He is speaking about the
7	economics of the publishing business in general and
8	the record business in general.
9	ARBITRATOR GULIN: What is the question
10	again? Can you just tell me basically, I don't recall
11	specifically.
12	MR. STEINTHAL: I think the question was
13	whether there's even one dollar that he can identify
14	as incremental costs that he incurred for the
15	licensing of anyone for doing that which is covered by
16	section 112 or 114 of the Copyright law.
17	MR. SCHECHTER: A category of expenses,
18	but I was concerned that he was asking for dollar
19	figures. It is the dollar figures that we have been -
20	_
21	ARBITRATOR GULIN: That was my concern,
22	but he's not asking specific.

1	ARBITRATOR VON KANN: The question is have
2	you spent any money on, not how much.
3	THE WITNESS: I think I gave the answer,
4	by the additional staffing costs, technology costs.
5	BY MR. STEINTHAL:
6	Q In all the examples you gave, were like
7	MP3.com or Music Net, companies that are not doing
8	that which is covered by section 112 and 114 of the
9	Copyright Act. Correct?
10	A You are saying where there is a legitimate
11	company that comes to you and asks you for consent?
12	Q How about a legitimate company that is
1.3	relying on the section 112 and 114 compulsory license
14	to stream sound recordings. I am asking
15	A Just in that limited sense?
16	Q That's right.
17	A Right.
18	Q Can you identify any costs incrementally
19	that Zomba has incurred in connection with the
20	licensing of product or otherwise in connection with
21	how webcasters under 112 and 114 of the statutory
22	license use your product?

1	A I would say generally no. No.
2	Q Just to go back to your concern, this case
3	will determine, will it not, what your revenue stream
4	will be for uses under 112 and 114?
5	A That is why I'm here, is to try and help
6	make a better assessment of that.
7	Q Now let's talk about the publishing
8	business costs for a minute. The tasks you described
9	in your direct testimony, acquiring songs for the
10	catalog, pitching songs to labels, administering and
11	licensing sync rights and mechanical rights and sheet
12	music rights, these are all costs that a publisher
13	incurs in connection with securing and marketing your
14	catalog. Correct?
15	A That is correct, yes.
16	Q Am I correct that there is no incremental
17	cost incurred by a publisher associated with
18	performances made by radio or Internet webcasts?
19	A I believe here it's slightly different.
20	Again, I'm not sure I have the law and everything like
21	that, but I think it is slightly different because
22	there's two ways that you can license for performance

1 | rights.

2.0

2.2

One is you give a non-exclusive license to ASCAP. I believe that they deal with the webcasters. I don't know how firmed up that is in terms of actual agreements and stuff.

The other way you can do it is you can actually license directly the webcasters. In that direct area, we have spent some time and energy trying to find out what a performing right is worth and trying to deal with some of the concerns of the webcasters about those issues.

Q You don't quarrel with the statement in your direct testimony at page 6, "The publisher normally does not license the performance rights in a song. That responsibility generally falls upon the performing rights society with which the publisher is affiliated."

A I think there's two issues there. I think in the physical world versus the digital world, that is a correct statement. Although we at Zomba have a certain disagreement on occasions with how ASCAP do it, and we may certainly be considering other

WASHINGTON, D.C. 20005-3701

1	alternatives, but in the digital world I think it is
2	much more an open game. We are looking at both
3	avenues from the get-go. We may possibly do direct
4	licensing. In which case, there will have to be some
5	additional costs involved. But we are not sure which
6	way to go at this point.
7	Q Right now you are not direct licensing on
8	the Internet, are you?
9	A We are considering it. We have some
10	proposals. We are not quite sure what to do at this
11	particular point.
12	Q But whether a radio station or a webcaster
13	like Spinner.com plays a song on your catalog once,
14	100 times, 1,000 times, or a million times, there's no
15	incremental cost associated with Zomba publishing in
16	that broadcaster or webcaster's use of the song. Is
17	that not right?
18	A If you go within the ASCAP framework, I
19	believe that is correct. If it is direct licensing,
20	you have to monitor it. There may be some incremental
21	cost. But generally I think in the sense you mean it,
22	it is very little, yes.

1	Q So in this case, just like it is with
2	respect to a record company's licensing of
3	performances under the statutory license by our
4	webcasters, the actual use by the broadcaster or
5	webcaster results in no incremental cost to the
6	publisher or the label for purposes of making those
7	performances, right?
8	A Yes. Okay.
9	Q Now let's talk revenue streams for a
1.0	minute. The revenues streams that the labels have
11	experienced, in the main I think you said 90 percent
12	or more of the revenue streams are from the sale of
1.3	CDs, right?
14	A Yes. That's what I think it is.
15	Q Yes?
16	A Yes.
L7	Q In connection with that then, you would
1.8	agree with the proposition that 90 percent or more of
19	that which the labels receive in revenue is for the
20	purchase by a consumer of a physical product, a sound
21	recording, that they then own and control disposition
22	of. Right?

1	A Yes.
2	Q It doesn't matter how many times the
3	consumer who buys the CD plays it. If you are going
4	to pay 16.95 with \$11 wholesale to the record company,
5	whether you play it once or a million times, in order
6	to get compensated, the label gets that one-time fee
7	for the sale of the physical product. Right?
8	A It's for home use?
9	Q Yes.
10	A And once the consumer buys it, it is
11	theirs. They can do whatever they want with it within
12	the bounds of the law. Yes.
13	Q Out of the wholesale collection that you
14	get, let's call it \$11. I may be off a little bit,
15	but just for present purposes call it \$11 for the
16	wholesale selling price of the CD. You then pay the
17	manufacturer, distributor, the performing artist,
18	whatever the little shares are and whatever is left is
19	your income from the sale of the CD. Right?
20	A Publisher as well. Right, absolutely.
21	Q The publishers meaning publishers
22	mechanical fee being part of the cost.

1	A Part of the cost. Then you end up with a
2	net before your overhead, and the research and
3	development costs and everything like that.
4	Q In fact, the labels in the United States
5	have no history of any revenue stream or any pricing
6	practices associated with the performances of sound
7	recordings. Isn't that right?
8	A I don't believe in the U.S. there is a
9	sound recording performance right in analog recordings
10	as opposed to the rest of the world, yes.
11	Q So for the most part, the whole pricing
12	structure and revenue stream that you have been
13	talking about for the label part of the business has
14	related to the manufacture, sale, and distribution of
15	physical sound recordings and really doesn't relate to
16	performances of sound recordings in any medium.
17	Correct?
18	A It is such a new area. Absolutely.
19	That's why I guess we are all here, yes.
20	Q But you as a publisher are quite familiar
21	with performance license pricing because that form of
22	licensing has been your most significant form of

1	income historically, has it not?
2	A It is one of the two principal forms of
3	income, mechanical reproduction from the sale of the
4	record by the record company, and then the
5	performancing come from the promotion to use your
6	word, on radio and TV of the record. Two streams.
7	Q We could look at your direct statement and
8	that NMPA study that you referenced and produced.
9	A Yes.
LO	Q In both your direct statement and the NMPA
L1	study, it indicates that performance income is the
L2	largest component of income for Zomba Publishing. Is
L3	it not?
L4	A This is an industry one.
L5	Q Let's do it separately, just to be clear.
L6	If you look at your witness statement and there is a
L7	chart I think, page 7.
L8	A Page 7, yes.
19	Q Page 7, you indicate, and I won't read the
20	numbers into the record since we are on public record,
21	you indicate
22	A This is a public document. That's fine.

1	Q All right. You indicate that at the U.S.
2	industry, the performance-based income exceeds
3	reproduction-based income 697 million to 641 million.
4	A That's what it says, absolutely.
5	Q Then there is additional sale of printed
6	music income of 233 million. Right?
7	A That is correct.
8	MR. STEINTHAL: Perhaps I should mark this
9	as an exhibit so we can put it into the record. There
1.0	was produced in discovery on response to documents
11	underlying your testimony an NMPA study called
12	National Music Publishers Association and the Harry
13	Fox Agency, International Survey of Music Publishing
14	Revenues. This is SX-10.
15	(Whereupon, the document was
16	marked for identification as
L7	Exhibit No. SX-10.)
L8	BY MR. STEINTHAL:
19	Q Can you identify this document, Mr. Katz?
20	A Yes. That is the National Music
21	Publishers Association and the Harry Fox Agency
22	International Survey of Music Publishing Revenues

1	report that I assume is for the year 1998 that we
2	talked about.
3	Q Yes. Just so that everybody knows who we
4	are talking about, could you describe the relationship
5	between the NMPA and Harry Fox Agency and the
6	publishers, for the Panel's benefit?
7	A Certainly. The National Music Publishers
8	Association is the trade organization for the music
9	publishers in the United States. The Harry Fox
10	Agency, it's part of I don't know if it is a
11	division or it's a separate legal entity. It is an
12	agency that on behalf of all these thousands of small
13	publishers and some of the larger publishers under
14	certain circumstances, will license the record
15	companies for the mechanical reproduction rights.
16	It is like if you are going to license a
17	record, you know you kind of go to Harry Fox because
18	that is probably the place that has the authority to
19	engage in discussions or negotiations.
20	Q Does the NMPA produce these kinds of
21	reports on an annual basis?
22	A I believe they do, yes.

1	MR. STEINTHAL: I would offer it into
2	evidence.
3	MR. SCHECHTER: No objection.
4	CHAIRMAN VAN LOON: Admitted.
5	(Whereupon, the document
6	previously marked for
7	identification as Exhibit No.
8	SX-10 was admitted into
9	evidence.)
LO	BY MR. STEINTHAL:
L1	Q Take a look, if you would, Mr. Katz, at
L2	page E00009. That is the Bates stamp number. Easier
L3	to read than the page number, which is buried. There
L4	is a pie chart on that page.
L5	A Okay.
L6	Q Does this chart indicate that
L7	internationally the performance-based income collected
L8	by publishers or their agents is the greatest of the
L9	pie at 44 percent compared to 42 percent for
20	reproduction rights and everything else filled in by
21	other kinds of licensing?
22	A For 1998, yes. It seems to.

I	
1	Q In your experience, is that consistent
2	with the music publishing business in the United
3	States?
4	A Probably.
5	Q Now going back to my initial question. I
6	was asking you whether to contrast the experience with
7	respect to the record label community where there, as
8	you testified, is no history in the U.S. of licensing
9	performances, that wearing your publisher hat there is
10	quite a rich history of licensing performances. Is
11	there not?
12	A Yes. I don't know why there was never a
13	performance right for record companies. That is a
14	whole different debate. But for music publishers,
15	there has been one in the analog world and obviously
16	digital world. Yes.
17	Q Is it fair to say that unlike in
18	connection with the sale or distribution of physical
19	possession of a sound recording, performances of
20	musical works are by their nature fleeting and not
21	designed to impart physical possession to the

consumer?

1	A In the analog world on radio, if you want
2	to record it, it is kind of difficult. It is a bit
3	like the tape machine over there. In the digital
4	world, obviously it is very different. You can rip a
5	CD from a performance if you want to. I think it is
6	less transitory in the digital world.
7	Q Let's break that up into two things then.
8	Historically in the analog world, you would agree with
9	me that the nature of the product being priced is a
10	product that is fleeting and not intended to convey
11	physical possession like the sound recording sale is
12	to the consumer, right?
13	A Yes.
14	Q And even with respect to performances on
15	the Internet, putting aside that component of the
16	population that actually rips streams, you would agree
17	with me, would you not, that streaming which doesn't
18	result in captured files, is the same type of
19	performance as that which has existed historically in
20	the analog world.
21	A In the context of your question, yes. I
22	think that is correct.

1	Q Are you familiar with the fact that in
2	order to qualify for the license under section 114
3	here, that there are certain requirements limiting the
4	nature in which transmissions are made to try to avoid
5	capturing and recording files?
6	A There are certain technological safeguards
7	that the webcasters have to put in place, I believe,
8	yes.
9	Q Let's focus again on the historic pricing
10	of performance rights. Because the performances are
11	inherently fleeting, that has resulted in a
12	compensation structure, has it not, which is much more
13	fractional than the compensation structure involved in
14	the sale of a CD. Correct?
15	A I don't agree with the word fleeting, I
16	have to say. Because with some of the webcasters that
17	may fall in this area, you can click buttons and kind
18	of get more of what you want quicker. So I have a
19	slight difference of view there.
20	Q Put that aside for a minute.
21	A Putting that aside, when you say
22	fractional, in what sense?

1	Q I will rephrase the question. You would
2	agree with me, would you not, that the pricing for
3	performances of musical works has historically been
4	based on fractions of pennies based directly or
5	indirectly on whatever usages of the underlying
6	musical works are made by a broadcaster?
7	A I think there's two parts to that. The
8	actual discussions with the broadcasters, I don't know
9	if they are based on fractional. But I know there's
10	a revenue stream that comes in, whether it's based
11	upon a percentage or a fixed dollar amount that you
12	work off of.
13	But once it gets into the ASCAPs of the
14	world in your example, it then goes down to the
15	writers and the publishers on that fractionalized
16	basis. It is fraction. But also the fraction of
17	income on the mechanical side that a publisher gets
18	versus the record company is also smaller in a sense,
19	Q I'm going to focus again on what you were
20	saying in terms of what you as a publisher receive
21	from ASCAP and BMI, it gets reported to you

essentially on a fractionalized fractions of pennies

per usage basis. Does it not? 1 You get basically -- each performance gets 2 Α assigned a certain credit value. That credit value is 3 then divided I guess into the pot every year to work 4 5 out how much each creditor is worth, yes. kind of divvy it up. 6 It comes to you literally in fractions of 7 8 pennies per usage. Right? In terms of when they 9 report to you. I don't know if that is the case. I think 10 when you get a statement from ASCAP, it shows say for 11 a segment of the industry like the TV industry, that 12 your song has been played say, or radio, and that 13 14 there is a lump sum amount that you get. there's so many radio stations. 15 I am talking about in the distribution 16 statement that comes to you, ultimately song by song, 17 there is some detail of how often your songs have been 18 19 played by the ultimate licensees, and the fractions of 20 pennies that have been earned as a consequence of that. Right? 21

I think in a broad sense, yes. You don't

1	know what each individual radio station.
2	Q But you know how much each individual song
3	within your catalog has earned.
4	A Exactly.
5	Q Based on that fractional reporting, right?
6	A Exactly. You do. Yes.
7	Q So very differently then, the revenue
8	streams with respect to the sale of a sound recording,
9	you have a situation where on the one side, sound
10	recordings you get a one-time sale, \$11 wholesale or
11	thereabouts, for however many times the consumer
12	listens, whether it's one time or a million. Whereas
13	on the performance side, historically performances
14	have been paid for on a basis whereby it's
15	fractionalized and keyed to the actual usage.
16	Correct?
L7	A It is more of a per use basis. Yes,
18	absolutely.
19	Q And that is okay wearing your publisher
20	hat because you have got no real incremental costs
21	associated with a broadcaster's performance of the
22	work, whether it's once, a million times, or ter

1	million times. Those little fractions add up and
2	ultimately become a nice revenue stream. Correct?
3	A As a publisher, that is only part of the
4	picture, because in that part of the question I
5	absolutely agree with you. As a publisher, I am
6	sitting here thinking if there's no more CD sales,
7	which is a big part of my business, and that goes
8	away, I am in trouble as a publisher as well. So that
9	is a whole other issue. That is a concern.
10	Q That issue pertains to the mechanical
11	licensing fees, does it not?
L2	A Yes.
13	Q Your concern is that somewhere down the
14	line, people are going to be making reproductions on
L5	the Internet or be displaced from buying albums by
L6	virtue of the offerings they make on the Internet.
L7	Correct?
L8	A That is correct. That revenue stream will
L9	go away as a publisher and a record company.
20	MR. STEINTHAL: I see we are at our 10:30
21	break time. I have got probably about 15 more
22	minutes. So I could either go straight or we could

1	take our break and I can come back and finish and try
2	to do it quickly.
3	CHAIRMAN VAN LOON: Actually 10:45 is our
4	break time.
5	Let me inquire. Is there anticipated
6	additional cross examination from any other?
7	MR. BERZ: Perhaps a couple questions.
8	CHAIRMAN VAN LOON: Perhaps a couple.
9	MR. SCHECHTER: We would just as soon
LO	finish before the break.
L1	CHAIRMAN VAN LOON: For obvious reasons.
L2	I'm learning.
L3	BY MR. STEINTHAL:
L4	Q Mr. Katz, at the outset I think I asked
L5	you some questions about section 115 compulsory
L6	license in the context of making a cover of a
L7	previously-published and popular song. I want to come
L8	back to that subject for a minute.
L9	You would agree with me, would you not,
20	that the mechanical royalty income that you as a
21	publisher receive is limited by the effects of the
22	compulsory license under section 115?

1	A In the sense that you can't negotiate a
2	different rate, it is limited, yes. It is more
3	limited by the success of the recording artist that's
4	doing it, to be honest. But yes, I understand the
5	point, yes.
6	Q You are not going to get more than 7.55
7	cents per song, when it's the mechanical royalty rate.
8	A Yes. You can get a little bit more if
9	it's longer than a certain five minutes. You can get
10	more depending on the number of records, tracks that
11	are on a particular album, you can actually get more.
12	Yes.
13	Q But you would agree with me that on
14	average, the publishers receive no more than 7-1/2
15	cents per song, per album sold. Right?
16	A I think that is a fair comment.
17	Q Is it fair to say many publishers have
18	been clamoring for an increase in the mechanical rate?
19	A I think it would be fair to say that the
20	publishers would like to get more, yes.
21	Q But until the compulsory license rate goes
22	up, thanks to that compulsory license rate, it's

1	unlikely to happen, right?
2	A I believe it's unlikely to happen, and I
3	think the same thing applies, frankly, on the
4	performance side, that the publishers feel that it's
5	undervalued on the performance side as well.
6	Q Well, let's talk about that. While
7	there's no compulsory statutory license, in fact,
8	you're probably alluding to the fact that each of
9	ASCAP and BMI have to operate under certain consent
LO	decrees that effectively compel them to offer their
L1	repertoire at prices that are subject to review by a
L2	different sort of body than this one, a federal court
L3	in New York, correct?
L4	A Certainly up till recently, till about
L5	June 11, I think that was the case. I'm not sure if
L6	the court exists anymore in terms of a review body.
L7	Q Oh, I
L8	A I think the ASCAP consent decree variance
L9	may I'm not completely sure but may have gotten
20	rid of that.
21	Q Let me represent to you, since I was
22	there, that

1	A You were? It's still there?
2	Q it still exists.
3	A It's still there? That's good.
4	Q The decree was amended somewhat but not in
5	any fashion.
6	A Not in a fashion. Okay. So, yes,
7	absolutely, it's the rate court.
8	Q And would you agree with me, based on your
9	one of your last comments, that the history of
10	performing rights organization licensing with that
11	consent decree supervision has been such that the
12	performing rights organizations have sought to set
13	fees at rates higher than that which have resulted
14	from litigation before that body?
15	A Always.
16	Q Always?
17	A Yes. I mean always the publisher would
18	prefer feels that that rate could be increased,
19	yes.
20	Q Sticking with your I'm sorry.
21	MR. GARRETT: He's asked for a bottle of
22	water.

1	THE WITNESS: I'm just want to grab some
2	water. Thank you very much.
3	BY MR. STEINTHAL:
4	Q Have there been instances focusing on
5	the mechanical license again have there been
6	instances where you, as a publisher, have believed
7	that the fair market value of the mechanical rate
8	actually exceeded the statutory rate?
9	A I'm not sure I completely understand the
10	question.
11	Q Have there been instances where you
12	believe that if there wasn't a statutory license
13	constraint that you believe you could achieve a fair
14	market value higher than the rates set forth in the
15	statute for the licensing of your mechanical rates?
16	A We, as publishers, just accept that that's
17	what we're bound by and get on with business and find
18	some good songs and give it to the record companies
19	and let them do their thing. I don't think we think
20	in those terms necessarily.
21	Q Have you had instances where you felt that
22	you thought the fair market value of performance

1	rights were higher than that which was set in the
2	ASCAP or BMI rate court?
3	A Could you repeat the question?
4	Q Have there been instances where, in your
5	view
6	A Yes.
7	Q the fair market value of performance
8	rights were higher than that which resulted from fees
9	being set in the ASCAP or BMI rate court?
10	A We've had situations where we've had
11	choices as a publisher whether to go through ASCAP or
12	directly license, and we've chosen to directly
13	license, because we feel that we can get better value
14	in the net sense than an ASCAP can do. We've gone
15	down that road. I don't know if that answers the
16	question.
17	Q It's one way to answer it.
18	A Yes.
19	Q Okay. And on the mechanical side, have
20	you ever sought to go outside the statutory license
21	scheme?
22	T don't think we're allowed to

1	Q Well, you've licensed at less than the
2	mechanical license rate at times, right?
3	A You mean in the statutory rate?
4	Q Yes.
5	A On occasions we will, yes. But you can't
6	go above the in other words, you can always down,
7	but you can never you hit the ceiling; you can't go
8	above it. You're bound by the statute, so you don't
9	really have a fair market position.
10	Q Now, you're familiar with a term called
11	"controlled compositions?"
12	A I am.
13	Q This occurs when a label like Zomba
14	Recording Company is producing an album for an artist
15	under contract with that label, does it not?
16	A A controlled composition clause can be
17	inserted into a record company contract with an
18	artist. And the idea of that is basically for the
19	record company to get a reduced to have to make a
20	reduced has less of an obligation to pay the
21	statutory rate. So they may say, for example, rather
22	than pay 7.55 cents per song, we'll only the artist

will agree he'll only take three-quarters of that rate. That's that usual standard.

And that, again, I think is the record companies, to an extent -- and I actually have mixed emotions since I'm on the publishing and the record side of this and with a European background -- but that's basically the record company saying, "We have all these huge costs involved, basically, in terms of our organization," which I've alluded to and I won't repeat, "and that we want a break with you, in terms of what we have to pay the publishers."

But what happens over time is as that hopefully on occasions where those recording artists become more successful those are renegotiated and often done away with. So it's a continuum there, I think -- new artist, new situation, smaller payments to the publisher, more successful artists, leverage changes. They'll do better than -- it's still controlled, but the reduction isn't as much.

Q And just to get a better sense of this phenomenon, it only applies where the performing artist is also the writer of the song, correct?

1	A Not necessarily. Primarily but some of
2	the controlled composition clauses will also try and
3	have the artist's producer bound as well. So if you
4	have an outside producer who's a writer, then,
5	basically, they'll ask that producer to also abide by
6	the controlled composition clause.
7	Q But it's the producer of the song being
8	produced, right?
9	A Of the recording, yes.
10	Q Yes. Okay. And the reason it's called
11	the controlled composition derives from the fact,
12	essentially, does it not, that the artist and perhaps
13	its producer is under the contractual control of the
14	label in connection with the production of the album.
15	And, therefore, the, quote, "controlled compositions"
16	written for the album are going to be subject to a
17	lower payment rate than a statutory rate, right?
18	A It's a contractual rate that's lower than
19	the statutory rate. I don't know how it came about.
20	Q Okay. But in that situation, the label,
21	again, is the user. It's the licensee of the
22	mechanical right, and it is basically saying to the

artist as part of the contractual package, "I want to pay less money for the mechanical rights. And since you're writing this for me under the terms of our contract, I want you to accept less than the statutory rate," correct?

A With a new artist that's often the position, yes. Not always, though, just if I could expand.

Q Sure.

A We have lots of -- lots, we have a number of writers who are also artists. Lincoln Park is a Warner Brothers act, I think, yes, who are very successful, where we, as a publisher, signed them first and then kind of developed them and took them to the record label. There, for example, because there was a bidding situation in the marketplace, they basically didn't have a controlled composition clause. They're still subject to the statutory rate, but they didn't have this controlled composition clause. So it depends on all the different circumstances.

Q But the effect of the three-quarter rate that you talked about, which is applicable to

1	controlled compositions, is that the owner of the
2	musical work is receiving a diminished amount relative
3	to the statutory rate as part of that contractual
4	result, correct?
5	A Yes. If the record company gets there
6	first, usually the publisher suffers, yes, absolutely.
7	Q And has the record company ever given a
8	justification to the artists for making them take a
9	lower rate in that situation?
10	A Justification. I'm sure they have done,
11	yes, yes.
12	Q The essential justification that, "Look,
13	if we make this record and it sells well, you'll get
14	it back by virtue of the share that you get on a sound
15	recording."
16	A No. I think it's I don't think it's
17	quite that, but it's basically it's a cost issue;
18	we have to incur more costs. And it then tends to be,
19	"But if your record sells more, then we'll increase
20	the rate." Sometimes that's actually in the
21	controlled composition clause. So we'll say, "You get
22	three-quarter rate, but if your album sells over

1	500,000 units or a million units or whatever the
2	figure is, you then go back to the full statutory
3	rate."
4	Q Where the unit's above that threshold
5	amount. It doesn't retroactively go back to zero,
6	does it?
7	A It varies, but, no, because that's where
8	some of your costs are originally. But it can,
9	because you've got to take a longer-term view of the
10	whole situation. And if you have an artist that's
11	gone gold or platinum, then your profitably going
12	forward, I guess, it changes. And then you start
13	again the next album.
14	Q And it is true, is it not, that
15	CHAIRMAN VAN LOON: Excuse me, Mr.
16	Steinthal. We are at the 10:45 now. Are you one or
17	two away or I mean you're certainly free to take
18	additional time, in which case we'll take a break.
19	MR. STEINTHAL: I would rather take
20	additional time, not to deprive them of the break
21	time, but I think I could minimize my continued
22	examination with the benefit of the break too.

CHAIRMAN VAN LOON: Let's take the break 1 2 then, and we'll be back at 11 o'clock. (Whereupon, the foregoing matter went off 3 the record at 10:43 a.m. and went back on 4 the record at 11:00 a.m.) 5 CHAIRMAN VAN LOON: Let's go back on the 6 record then, and please continue Mr. Steinthal. 7 BY MR. STEINTHAL: 8 on the subject of Katz, we're 9 Q Mr. Let me just ask you a few controlled compositions. 10 more questions about that. Is part of the controlled 11 composition negotiation with an artist that agrees to 12 have certain of their songs treated as controlled 13 14 compositions, does it also include typically a limitation to ten songs on an album so that even if 15 there's more than ten songs on the album, they get 16 17 paid only for ten? It's where the artist is the writer or the 18 producer. You have that situation. For the artists' 19 20 recording of his own song or her own song, you're referring, I think, to a thing that we in the record 21

industry or the publishing industry call a cap, which

1	means if there are only if there are 12 songs and
2	you have a cap of ten, you only get paid on the ten
3	songs. Obviously, if that song under your compulsory
4	licensing scenario was recorded by Frank Sinatra,
5	obviously previously, but that would be at a full
6	rate. There's no controlled competition clause that
7	applies for the other uses of that song. It's just
8	for that particular use. It could be capped, yes.
9	Q So it's clear it's the songs written by
10	the artist for that first release on the album that
11	will be deemed to be controlled compositions and
12	subject to a cap of ten songs per album, even if
13	there's 12 or 13 songs on the album.
14	A There's potential, yes, potential to do
15	that. The cap could be ten, it could be 11, 12. It
16	varies depending on the negotiation.
17	Q Could it be under ten?
18	A I've never seen it under ten, no.
19	Q And you mentioned that controlled
20	compositions are typically paid for a three-quarter
21	rate. Are there other components of the licensing
22	industry that basically get paid at a three-quarter

1	rate?
2	A You mean of the music publishing license
3	industry that get paid at a three-quarter rate?
4	Q Yes. Is it not true, for example, that
5	record clubs typically pay a three-quarter rate for
6	the mechanical licenses that they secure wearing
7	your publishing hat?
8	A Okay. The record clubs will not, I don't
9	believe, accept a record unless it's at a three-
LO	quarter rate. And then you, as a publisher, or you,
Ll	as a record company, then make a decision as to
L2	whether you want to be in the club or not. I mean
L3	there's lot of other factors why you want to be in the
L4	club or not, but, yes, if you're in a record club, you
L5	have to be a three-quarter rate or you choose not to
L6	go in it, yes.
L7	Q And are there still a number of
L8	compositions out there that were written long enough
L9	ago that they're subject to even a lesser rate, like
20	a two cent rate?
21	A I don't know if there's a two cent rate
22	around.

1	Q There are some rates that are there are
2	some songs that are subject to a lower rate than the
3	7.5 cent rate, though, apart from the three-quarter
4	rate.
5	A I think what you may be referring to is
6	that in some of the controlled composition clauses it
7	doesn't just have a statutory rate or less that floats
8	with the statutory rate but becomes fixed in time, and
9	it's the statutory rate applying at that moment in
LO	time, and it doesn't necessarily change unless the
11	artist or the writer or whoever can go in and
12	renegotiate that. So there may well be some, yes.
13	Q Do you have a number in mind which
14	reflects what the average actual sort of aggregate
L5	mechanical rate is, if you look at the three-quarter
L6	rates and the older song rates, as well as the
L7	statutory rate?
L8	A I've never no, no.
19	Q Just a question relating to Zomba. Is
20	Zomba a label that actually falls in the category
21	where most of the compositions underlying the Zomba
22	catalog of sound recordings are owned by Zomba

1	Publishing?
2	A So you're saying do we control a lot of
3	the publishing that's on our records?
4	Q Yes, another way of saying it better than
5	I did.
6	A A significant amount the publishing
7	company would control.
8	Q More than 50 percent.
9	A I don't know for sure, but probably, but
10	I'm not sure.
11	Q Okay. Mr. Katz, where are you from?
12	A Where am I from?
13	Q Originally.
14	A I'm a New Yorker with this accent, right?
15	(Laughter.)
16	Originally from London, and I came to New
17	York in '85, so I've been here a while.
18	Q Are you familiar with the fact that in the
19	UK, for example, there's a long history of recognition
20	of sound recording performances under UK copyright
21	law?
22	A In a general sense, yes.

1	Q Are you familiar with the fact, for
2	example, that in the UK radio stations pay both a
3	collection society for sound recording owners, a
4	performance fee and a collection society for
5	publishers and composers a performance fee?
6	A Yes, yes.
7	Q Are you familiar with the fact that in the
8	UK the rates for performances of musical works by
9	radio stations tend to be at or slightly more than the
10	compensation that is paid to the collection society
11	for the owners of sound recordings for performances
12	thereof?
13	A In the analog world, you're saying that
14	the percentage that's paid to publishers versus the
15	percentage that's paid to the record companies is
16	slightly more.
17	Q Correct.
18	A I don't know that for a fact, because I
19	was more aware that the I wasn't sure if it was a
20	percentage is how it was calculated. I thought it was
21	like a per record basis. On the record side, I
22	thought it was like a per use basis. I didn't know

1	it's a percentage.
2	Q Are you familiar with the relative rates
3	in Europe, other than the UK, that broadcast radio
4	pays for the performance of sound recordings as
5	opposed to what broadcast radio pays for the
6	performance of musical works?
7	A No.
8	MR. STEINTHAL: I have no further
9	questions.
10	CHAIRMAN VAN LOON: Your colleague does
11	have a few.
12	BY MR. BERZ:
13	Q Good morning, Mr. Katz. My name is David
14	Berz, and I'm here on behalf of DMX, AEI Music, Inc.
15	Mr. Katz, are you generally familiar with the so-
16	called background music services and the services they
17	provide to business establishment?
18	A In a general sense, yes.
19	Q And, essentially, are you aware that they
20	deliver services and music that provide ambient
21	background music in restaurants, retail stores,
22	business establishments, public places?

1	A They yes, as music, yes.
2	Q Let me ask you briefly, do you recall the
3	discussion you had with Mr. Steinthal concerning
4.	displacement?
5	A Yes, absolutely.
6	Q Okay. Let me ask you, are you aware of
7	any studies or analyses that look at the impact of the
8	background music services and how they might or might
9	not affect the displacement of CD sales?
10	A I'm not aware of any studies that I know
11	of. There may be, but I'm not aware.
12	Q Do you have any other information that
13	would tend to show that somehow the listening to music
14	in public places by customers of restaurants and
15	retail stores somehow substituted for the purchase of
16	CD sales?
17	A I don't know either way.
18	Q Thank you.
19	CHAIRMAN VAN LOON: Any other questions
20	from the team on this side? No? Any redirect then?
21	MR. SCHECHTER: Yes, briefly, Your Honor.
22	REDIRECT EXAMINATION

1	BY MR. SCHECHTER:
2	Q There's been a lot of discussion of
3	advances. Could you just, relatively speaking, tell
4	us whether the how the size of advances in the
5	music publishing world compares to the size of
6	advances in the record company world?
7	MR. STEINTHAL: Can I just interpose an
8	objection on the basis that I don't think we talked
9	about advances at all, I mean in the cross. I don't
LO	think the word was even uttered.
L1	MR. SCHECHTER: I believe it was. I'll
L2	withdraw the question. It's covered in the written
L3	testimony. No problem.
L4	BY MR. SCHECHTER:
L5	Q Some of your testimony got into sort of
L6	who brings the artist/songwriter to whom. In pitching
L7	a song, is the relationship different if the record
L8	company has already signed the singer/songwriter to a
L9	recording contract?
20	A The relationship between the music
21.	publisher?
22	Q Yes. Does the music publisher pitch under

1	that situation?
2	A It's a combination. Sometimes the record
3	company will come to the music publisher and say, "Do
4	you have any songs or my artist?" And sometimes the
5	music publisher will go to the manager of the artist
6	or to the record company and pitch the song. It would
7	also depend if it's a self-contained artist who writes
8	their own songs.
9	Q That's what I'm talking about. I'm
10	talking about the singer the person who records
11	their own music. My question was unclear.
12	A Okay. If it's a recording artist who
13	writes their own songs, such as this rock group,
14	Lincoln Park, that I mentioned before
15	Q And it's signed by the record company
16	first.
17	A Record company. There's no reason for a
18	music publisher to do that, because the vehicle, the
19	recording, the CD, that's going to be released by
20	those artists is going to have its songs in there
21	anyway, so there's much less to do, basically.

So the pitching that you were talking

1	about is when you're trying to sell the song to
2	someone who isn't already signed to record it.
3	A Yes. I mean, you don't yes, you only
4	have to go through that effort if you have a
5	songwriter who is not a recording artist, basically,
6	in terms of the pitching, yes.
7	Q You were asked questions about the costs
8	to a record label related to the incremental costs
9	related to webcasting within the statutory licensing.
10	Have you heard of Sound Exchange?
11	A I have heard of Sound Exchange.
12	Q What is Sound Exchange?
13	A Sound Exchange is a organization that was
14	set up to monitor and, I guess, negotiate, to a large
15	extent, the performing rights in sound recordings
16	with, amongst others, the webcasters and I believe
17	also maybe the maybe at least the collection from
18	the satellite services.
19	Q Do you know whether it plays a role in the
20	collection and distribution of webcaster royalties?
21	A Yes, I believe it would.
22	Q Who pays for that? Who pays the costs

1	associated with sound recording Sound Exchange,
2	excuse me?
3	A Sound Exchange is basically a division
4	it's a division of the RIAA, almost in the same way
5	that Harry Fox is to the NMPA, if I can draw that
6	analogy. And so the record industry, in terms of its
7	use and everything, puts in the money to float Sound
8	Exchange in its early days, basically, and hopefully
9	over time, depending upon the revenues that come in,
10	at some point in time it may be self-sufficient in the
11	sense that
12	Q But even when it's self-sufficient, the
1.3	costs of that entity would come out of the statutory
14	license.
15	A Yes. That's out of the record company's
16	pocket, basically, if that's yes.
L7	Q Okay. There's been a lot of discussion of
18	the mechanical rate, and it's been called the
19	statutory rate. Are you aware whether that rate was
20	set pursuant to a negotiation between the two
21	industries?
22	A My understanding is that that was not

1	negotiated in the market sense between a willing buyer
2	and a willing seller. I believe that that was through
3	a copyright tribunal that set the rate for various
4	time periods. I think there's a new I think it's
5	actually going to increase in January of next year.
6	I think it goes up to eight, maybe eight cents a song.
7	So it always goes up.
8	Q And you discussed that the publishers
9	don't get more than the statutory mechanical rate, and
10	if there are negotiations, it's negotiations from that
11	down; is that correct?
12	A That's correct, because you have ceiling,
13	yes.
14	Q Now, you're aware that a rate's going to
15	be set in this case for webcasting, correct?
16	A Correct.
17	Q Would you expect that if the record labels
18	tried to negotiate with webcasters after that was set,
19	would they get more or less than they got in this
20	proceeding?
21	MR. STEINTHAL: Objection.
22	CHAIRMAN VAN LOON: Based on?

Just speculation. MR. STEINTHAL: 1 MR. SCHECHTER: This man's been in the 2 business negotiating --3 Overruled. CHAIRMAN VAN LOON: We can 4 hear an informed judgment. 5 That's why I'm here, I THE WITNESS: 6 7 think, because I am concerned that it's a fair rate that allows us to sign artists and writers and have 8 their creativity go out and build businesses alongside 9 them. And so I think it's very difficult if it's the 10 wrong rate to recapture and kind of try and get that 11 back to an appropriate rate in the future. 12 So my --I can't put myself in the minds of the webcasters, but 13 within my experience we, the publishers, want more in 14 terms of dealing with the record companies. I assume 15 the webcasters, if they have a certain bar, they're 16 17 going to want to lower the bar as opposed to increase it, I guess. 18 BY MR. SCHECHTER: 19 I want to talk briefly about there was 20 some discussion of the sync industry and what goes on 21 there, and I believe your testimony was that, 22

response to Mr. Steinthal's questions, was that if I copyright owner. Is that correct? That's correct, yes. Q sonq? They're two independent rights.

want to put a song in a commercial, TV commercial, it's a separate negotiation between the user and the publisher and then the user and the sound recording

Now, if the sound recording copyright owner says, "I don't want to license that sound recording to you, " can the publisher still license the

sound recording owner, the record company, could say, "I don't want to do that." And sometimes it's the The artist, Bruce Springstein, doesn't want to be in commercials. Some artists don't want to be in commercials in the U.S. and will be outside, like in Japan, for example. They could do that.

The music publisher can then say, "I'll give you the song, 'My Way,'" to use the Frank Sinatra It's a wonderful song. It was a French song originally. "And now if you want to have someone else record it specifically for the commercial, you can do

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

1	it for a fee.
2	Q Would the Nortel television commercial
3	with the Beatles song, "Come Together," be an example
4	of that? Are you familiar with that?
5	A I know the song, but I don't know if
6	that's the original recording or not.
7	Q Okay.
8	A Because sometimes you get things called
9	sound alikes where the recording company won't license
10	that particular license
11	Q And it's
12	A Go ahead.
13	Q I thought you were done.
14	A No, I was just going to say and the music
15	publisher will license the song, and they kind of
16	record it a bit too close to the record industry's
17	the recording artist's style. Bette Midler had a
18	case, I think, of that.
19	CHAIRMAN VAN LOON: Are you certain that
20	"My Way" was originally French?
21	THE WITNESS: "Comme Habitude," isn't it?
22	I think it was "Comme Habitude," and Paul Anka wrote

- 1	
1	the English lyrics. That's my understanding. I have
2	a Swiss/French wife, so she's my source.
3	(Laughter.)
4	ARBITRATOR VON KANN: Always believe your
5	wife. It's very important to do.
6	(Laughter.)
7	MR. SCHECHTER: I have no further
8	questions.
9	MR. STEINTHAL: Nothing on recross, Your
10	Honor.
11	ARBITRATOR VON KANN: I have some
12	questions for this Witness. Mr. Katz, you spoke a
13	little bit about the phenomena of displacement in your
14	testimony. And that are you familiar, by the way,
15	with the statutory standard that we are required to
16	apply in setting this rate?
17	THE WITNESS: The willing buyer/willing
18	seller?
19	ARBITRATOR VON KANN: Well, in the entire
20	provision of the statute.
21	THE WITNESS: I haven't read it in detail,
22	to be honest with you.
	1

12

13

14

15

16

17

18

19

20

21

22

ARBITRATOR VON KANN: One of the things that Congress has said we're to look at is whether use of the service may substitute or may promote the sales of phono records or otherwise may interfere with or may enhance the sound recording copyright owners' other streams of revenue, other than this licensing fee, from its sound recordings, which is really this question, to some extent, of whether the webcastings are going to hurt or help your record sales. Okay?

Now, I'd like to try to get -- you've been in this industry about 20 years, I gather -- 18 years with Zomba and two years with EMI.

THE WITNESS: Correct.

ARBITRATOR VON KANN: Yes. And I'd like to get a little bit of the benefit of your thinking about this in a little more depth than you mentioned earlier. You understand that our -- the effect on record sales of downloading is pretty obvious. If you can take it off the web, why go buy it? But you understand that this proceeding doesn't involve downloading. Do you understand that?

THE WITNESS: I understand that in a

NEAL R. GROSS

legitimate sense it doesn't, absolutely.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

2.0

21

22

ARBITRATOR VON KANN: Right, right. At least in theory, these folks over here are not permitted to download, and the rate is set.

THE WITNESS: Yes.

ARBITRATOR VON KANN: So let's put downloading aside for the moment, as the substitution effect there seems pretty obvious. Are you familiar with the phrase that's been used sometimes, the "celestial jukebox," which is, I guess, a kind of interactive service where I can sit down at computer, and say, "I'd like -- right now I want to hear Frank Sinatra, "New York, New York," and I punch in some buttons, and low and behold it will appear on my Internet? That effect of substitution seems pretty obvious. Why go buy the Frank Sinatra CD if I can come in and play it any time? But that's not before us also. We're not dealing with interactive services, okay, so put that aside.

We're dealing with Internet streaming, which is a situation in which, at least legally, there's not downloading, there's not immediate demand.

There are some issues about whether you can influence a little bit. But, basically, we're dealing with people who can go to the Internet and hear music played, which they can't download and which is not at least immediately responsive to typing in a demand.

And the question is, what effect is that going to have on record sales? Is it going to promote or displace record sales? Now, you said, in your testimony, I think in answer to a question from Mr. Steinthal, that you were not really aware of any concrete evidence that shows there has been displacement, but you have a concern about that; is that right?

THE WITNESS: That's correct.

ARBITRATOR VON KANN: And, frankly, my review of the record here is that neither side has brought us very conclusive evidence on that, probably because this whole phenomena is so very new that there hasn't been enough time to really amass very much evidence. So we may be forced to try to make some reasonable projections, as best we can, with fairly minimal evidence about this substitution issue.

WASHINGTON, D.C. 20005-3701

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

One of the things that you said, though, I thought that I caught from your testimony, and this is what I'd like a little clarification about, is -- I don't have the transcript; I'll have it tomorrow -- but I think you said something like this: That even if a service is not a demand service where you can immediately request a specific song at right this moment, that to the extent the webcasting industry produces more and more specialization so there's 200 channels or 500 channels and if I like reggae and nothing but reggae, I can get it immediately.

I can go to the web and go to various channels, and reggae will be there instantly for me to listen to as long as I want, or Gregorian Chants or Irish harp music or whatever it is that my -- I thought I heard in your testimony some concern that that -- the degree, not the interactiveness, but the potential degree οf specialization has а for displacing record sales. Because if I can get all the reggae I want 24 hours a day, all day long, why go out and fill up my CD collection with reggae. I can get a lot more of it -- I can get all I need by just going to the web. Is that, essentially, one of the things that underlies your concern about displacement potential?

THE WITNESS: Yes. You put it very well.

That's absolutely.

ARBITRATOR VON KANN: Now, the thing that I'd like to ask you about that is -- this is a very difficult job of forecasting and predicting. None of us here have magic balls to look in the future. It strikes me that that specialization potential could work both ways, and I guess one way it could work is the way I just described -- why go out and buy more reggae records, because I could get all I want?

But the other way it could work, I suppose, is I'm listening and I suddenly hear somebody I've never heard of before, and, gee, that guy's great. I've got to go out and get his CD. So the next day I stop by, and I had no intention of buying this guy's CD before, never heard of him. But suddenly I heard him there, and I like that, and I don't want to necessarily wait till he comes up three weeks from now or three months from now again. I'd

like to have him tomorrow, because I've got this 1 party, and all my reggae friends are coming around, 2 and I want them to -- so it strikes me --3 CHAIRMAN VAN LOON: Your example might be 4 more credible with Tony Bennett. 5 (Laughter.) 6 ARBITRATOR VON KANN: Tony Bennett, you're 7 8 probably right. Although we do have the 9 MR. SCHECHTER: owner of a reggae label testifying, so he's very happy 10 if you use --11 But I guess what I 12 ARBITRATOR VON KANN: -- I would really like the benefit of your thinking, 13 14 as somebody who's been in this industry for a while, is this powerful new Internet force, which might 15 displace because, as I said, I've got all the reggae 16 17 I need, but it might also promote record sales, because I'm suddenly hearing people that I can't live 18 without and never heard of before and so forth. 19 20 can -- as somebody who's got some experience, can you give me sort of the benefit of your thinking of how I 21

can try to make judgments about which of these

phenomena seems more likely to ensue?

THE WITNESS: I think it would be inappropriate and wrong to say that the webcasting of music does not promote music. I do believe it does do that to an extent, and it's an industry that we should embrace upon the right terms. But I do feel also that there's a bigger, probably a bigger chance that it could displace the sales of music and might -- I don't have any fancy surveys to do that or anything.

But what I tend to do, so I go around to friends that have children, especially 13, 14, 15. I'll say, "Hey, what are you watching on the web, what's going on, what you listening to," and I go on with them for half an hour and just say, "Show me what's going on," because they're really my audience; that's the consumer. And the tendency I've heard from these kids has been, you know, "It's really great to hear it." And I ask them, "Well, would that make you buy the CD?" And they either say, "I don't need to, I can burn it, even if they're not meant to." But even if they don't do that, they say, "No, it makes me want to go to the concert of the artist, and it makes

me want to buy the t-shirt, but I don't need to buy
the sound recording." That tends to be the kind of
atmosphere and the drift that I'm getting from my
unofficial advisors, so to speak.

So I don't say that it's not promotional.
There's certainly a valid promotional use to it. But

I do feel there's a serious concern about it displacing music.

MR. RICH: May we call his children on rebuttal?

(Laughter.)

THE WITNESS: Mine's only two.

ARBITRATOR VON KANN: Well, now that's an interesting, obviously, anecdotal and not scientific kind of survey, which is -- and that is a certain segment, I suppose, of the market. But is it your impression that that kind of reaction is likely to be typical of the record-buying industry as a whole? I think I saw somewhere in here some demographics about the different ages of people who buy, and certainly a lot of records are bought by younger people, not so much 13 or 14, maybe, but up to 18 or something like

7

8

9

10

11

12

13

14

15

16

17

18

19

20

2.1

that. But what about more adult listeners? There is -- we're all living longer. There is life after 13.

(Laughter.)

And a big segment of your population are adults, and they are people who listen at work and listen at home and so forth.

THE WITNESS: Yes. I think it's slightly I think the older demographic are more -wait, I think there's two issues. I think, one, they're more accustomed to buying CDs and owning a I think the other thing that I -- to physical thing. me personally that people don't think about is the actual time that these people have to do this stuff. If you're a college kid or you're on vacation, you don't have necessarily as many obligations as we might do in our world. You can sit down, you can play around with these services and construct your own radio station, which, I guess, is one of the gray areas. But the -- I don't have time to do that, and if I have some spare time, I want to spend it with my I don't want to spend it sitting there in front of the -- so I think it's very much a generational

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

That's why I think over time that the buying shift. 1 habits will change, and that's why I think the 2 displacement can come. 3 ARBITRATOR VON KANN: Let me see if I 4 Does that suggest you think there is a follow. 5 greater potential for displacement among young persons 6 and possibly a lesser displacement and maybe a more 7 8 promotional possibility with older listeners? think your the THE WITNESS: I 9 I think it's more displacement point -- correct. 10 downward in age. I think the promotional point could 11 be -- I think there's a promotional ability probably 12 across the board, but I think people my age we like to 13 14 buy CDs. Now, one issue, I ARBITRATOR VON KANN: 15 suppose, is whether these younger listeners, as they 16 17 become older, will continue their young habits of just listening to it on the web or whether they'll become 18 like us, and they'll want to actually purchase the 19 20 record? Ι quess we'd need to get a couple psychologists in here to predict that. 21

THE WITNESS:

I think -- if I may?

2.2

ARBITRATOR VON KANN: Yes.

19

20

21

22

I think history shows us THE WITNESS: that people change, because there was the, what was it, eight-track, there was the tape, there was the vinyl single. I think people do change those habits, and I don't think they shift back on age. technologies change how people listen or view. think it's more likely that they'll have their -while they're doing that, they'll have their cell phone, and they'll be going around somewhere. This is more prevalent in Europe. And let's say I want to listen on the web to the new Backstreet Boys or the new N'Sync song or recording, and I've just listened I think that's how it's going to go. just be more transportable, basically.

ARBITRATOR VON KANN: If I get it, your concern is that particularly with a younger audience they sort of get in the habit, as it were, of getting their music that way. That will carry with them, and as they get older they will be less likely to buy records than people of our age have been.

THE WITNESS: Yes. And I think they will

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

buy music, sound recordings, in my view, the subscription services, like cable is today, although, I think it would be transportable, as I say, on your cell phone or on your watch, or whatever. And that's why I think this performance right is so important, because it wouldn't be a physical thing that has a mechanical royalty attached to it. It will be more of a performing-based consumer habit.

Just one more on ARBITRATOR VON KANN: What about the -- we all have more and more that. technology and less and less time, it seems. things that save us time are valuable -- the trip to the record store and standing in line and buying whatever. What about the feature of many of the webcasters, which is the famous "buy now" button? You're listening to the thing, it's the moment, it's there, and all you have to do is push a button, and I quess that connects you up and you give your daddy's credit card probably or if you have one. That would seem to me to have a substantial potential for increasing record sales, maybe even enough to offset the inclination you spoke of. What is your sense about the -- if there is some displacement effect, isn't it likely to be offset by the greater convenience that the webcasters bring to purchasing records?

THE WITNESS: Two points on that. I think the click-through, which is how you get to the record store online, versus the actual buy rates are very different. I think a lot of people click through, but they don't actually buy as much, and I think it's very disproportionate.

ARBITRATOR VON KANN: Okay.

THE WITNESS: And then, secondly, I think over time, as the physical CD goes out of favor, out of style, that that will have much relevance anyway. So if you were taking my longer-term view, my ten-, 15- year view, I think if we were sitting here in 15 years time, that basically that wouldn't -- that the physical CD mix would be very different as a percentage of the overall income and I guess to the extent depending upon the outcome of this particular component.

ARBITRATOR VON KANN: Is that -- just one

NEAL R. GROSS

16

17

18

19

20

21

2.2

1

more. The extent to which -- I mean there are so many pieces of this that it is -- there are a lot of variables going on, and it's hard to hold any one of them steady. If, for example, downloading becomes prevalent and you all will be getting separate license fees from that, it may -- I suppose we could all imagine a world in which over time the sale of records goes down substantially, because people have preferred to just download from the computer. But they'll be paying a licensing fee, the services will, for that. So to what extent the non-downloadable, non-celestial jukebox streamer is actually impacting your sales, I quess, you know, you say maybe 15 years from now no one will particularly have CDs, perhaps because they can download it, but that's a separate equation.

So if you could put that aside, the question is whether this kind of service that we're looking at here, which doesn't offer that potential, is likely to diminish your sales. And I guess you have some concern on that, but it's almost a matter of it's too early to tell for so many of these things, I suppose.

I mean

It's very early. THE WITNESS: we're all in an interesting and difficult position, but I think with downloads -- we've tried it. spent some money getting infrastructure in place and trying it, and I think the other major companies have tried it before us. We tend to be slightly behind the And the download in what is, I guess, in Internet terms, a traditional sense -- you buy a digital file and it's yours to keep on your computer or put on your portable device -- that was unmitigated disaster for us at the moment and I think for the record industry, generally.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

2.0

21

22

And the feeling certainly within Company and I believe in the industry, generally, is that it's more going to be a subscription service with some downloading on a kind of a timed out or maybe a permanent basis. But it's going to be more either interactive or kind of non-interactive than consumer's going to go for. That tends to be the thinking at the moment.

ARBITRATOR VON KANN: That the, I quess, the celestial jukebox is really more of a threat long-

1	term to record sales than is downloading? Is that
2	what you're saying?
3	THE WITNESS: I think it's going to be a
4	bigger part of the business, yes, a significantly
5	bigger part of the business. But it is a threat. It
6	depends on lots of different factors. The opportunity
7	is already potentially.
8	ARBITRATOR VON KANN: That people are less
9	"Why mess with all this downloading if I can just sit
10	down and have anything I want whenever I want it by
11	punching in a few buttons." Is that it?
12	THE WITNESS: Yes.
13	ARBITRATOR VON KANN: Okay. All right.
14	Thank you.
15	CHAIRMAN VAN LOON: Judge Gulin, do you
16	have any questions of the Witness?
17	ARBITRATOR GULIN: Let me just clarify
18	what your concerns are, then, about these particular
19	entities, not the subscription services, not the
20	interactive services. It comes down to your concern
21	about the specificity of the genres that they're
2.2	offering. You mentioned, for example, a Beatles

1	channel. Do you any of these entities offer a Beatles
2	channel?
3	THE WITNESS: Within the context of this
4	particular hearing, I don't believe that they are, in
5	a sense I don't believe that they do, but I'm not
6	sure, but I doubt it.
7	ARBITRATOR GULIN: I don't know either,
8	but
9	THE WITNESS: Yes, maybe. But I think
10	it's the gray area that causes me concern, where you
11	can have the pop category and then there's nine
12	different choices pop from the '50s, '60s, '70s,
13	male vocal, female vocal. It really butts up against
14	what would be an interactive service.
15	ARBITRATOR GULIN: So your concern is
16	the specificity is so great that it's getting to the
17	point you're almost at the point where you can ask
18	for, if not a specific CD, but a specific artist and
19	maybe a group you can almost limit it to a group of
20	CDs within that artist.
21	THE WITNESS: I believe that's the case,
22	and you have on these services, you have a button

that can pause, and you can have a skip button only 1 going forward, I believe. So you can kind of -- the 2 stuff you don't like you can just press a button and 3 you're on to the next thing. So I think people read 4 the act probably and said, "How could we perhaps get 5 a different service but still fall within the bounds" 6 or, in my view, not necessarily fall within the bounds 7 of the act? 8 ARBITRATOR GULIN: Well, speaking of the 9 act, you're familiar with the concept of the sound 10 recording performance complement? Do you know what 11 that is? 12 THE WITNESS: Yes, yes, I do, yes. 13 ARBITRATOR GULIN: And that limits the 14 times that a particular artist or a 15 number of 16 particular track from a particular artist can be 17 transmitted within a given time, I believe is how it That doesn't ameliorate your concerns about 18 works. 19 this celestial jukebox concept with respect to these 20 entities? WITNESS: I think it's helpful. 21 22 Absolutely, it is helpful. What I'm not sure of,

because I'm not -- I actually haven't tried this, so technically -- I don't if you skip -- if the three hours is basically a three-hour period if everything was played back to back in real time or you can actually skip them and kind of crunch time up. I'm not sure about, and I think I would have a different view if it was the latter. 7 concerned if it's the former, but I'm still concerned, 8 because it's still -- it's like if I want to hear 9 Backstreet Boys, Christina Aguilara, Destiny's Child, 10 that kind of pop genre, I can still pretty much get 11 all my different records within a certain of period of 12 13 So it is a concern to an extent. time.

> ARBITRATOR GULIN: Okay. Thank you. That's all I have.

> CHAIRMAN VAN LOON: I wanted to pick up on your consumer reports from the 14-year old children of your friends. And you said that the answer on whether they're likely to buy a CD was more likely to buy a tshirt, go to the concert. But you also said or burn In your testimony earlier, you mentioned, just in passing, the ability to rip things off, and

1

2

3

4

5

6

14

15

16

17

18

19

20

21

I'd like to understand. On the one hand, we've got what's sort of legal and formal and appropriate. And then on the other hand, we've got the technological prowess of 14-year-olds. And I'm interested in what your experience or knowledge is about the ability of kids to burn the CDs anyhow off the air, streaming or however they do it.

THE WITNESS: Yes. I mean I think the ultimate -- and, again, I say I'm not technical but within my kind of general knowledge, I think the worst services that do that, which is obviously nothing to do with the webcasters here, is the Napsters of the world, which is just peer-to-peer file sharing. And that's just totally illegitimate, in my view, and the courts have upheld that. But there are, I'm told by our people within the Company, that you can buy, for about \$15, a program that allows you to circumvent the subscription safeguards in certain cases and then just burn straight to the CD.

And the thing that a lot of the kids, because they've had the Napster experience of getting music for nothing, that is also ingrained. They don't

1	think they're doing something wrong, in a sense. It's
2	kind of a socialization issue. And so I'm also
3	worried that that migrates to here, and there's no
4	difference between a Napster or just getting it from
5	just a different source and pressing a different
6	button.
7	MR. SCHECHTER: There will be testimony on
8	this issue next week.
9	THE WITNESS: In which case I will
10	gracefully bow out, because I'm not I don't have an
11.	expertise, but it's just a sense from speaking to the
12	friend's children.
13	CHAIRMAN VAN LOON: Is there anything
14	ARBITRATOR GULIN: Yes, just one more
15	question. And that is with respect to the
16	broadcasters who retransmit, what were your concerns
17	about them again in terms of displacement?
18	THE WITNESS: I think they're the other
19	end of the scale. I think they're what I might call
20	the safer end if it's just a retransmission, in a
21	sense. But the principle applies that if they were to
22	play three or four tracks from the same album, because

1	I guess the complement I don't know if the
2	complement applies to them in the same way if it's a
3	retransmission; I have no idea.
4	ARBITRATOR GULIN: I don't believe it
5	does, but
6	THE WITNESS: Then maybe it's more
7	dangerous in a way.
8	ARBITRATOR GULIN: Okay.
9	THE WITNESS: It may be more dangerous.
10	ARBITRATOR GULIN: I'll be corrected.
11	Perhaps it does within 150 miles; is that how it
12	works?
13	THE WITNESS: I don't know how it works.
14	ARBITRATOR GULIN: It does.
15	THE WITNESS: Oh, it does.
16	ARBITRATOR GULIN: It does apply to them.
17	Same rules.
18	THE WITNESS: Same rules. Okay. Thank
19	you. I have the same concerns then, I guess.
20	ARBITRATOR GULIN: But it doesn't apply to
21	broadcast radio? How can it apply to one and not the
22	other?

MR. JACOBY: Well, that's a good question. 1 ARBITRATOR GULIN: All right. So in any 2 it doesn't apply, that would be your event, if 3 concern. 4 I think if it does apply or 5 THE WITNESS: doesn't apply -- if it doesn't apply and they can play 6 my four Beatles songs back to back, I'm even more 7 8 concerned. ARBITRATOR GULIN: If it does apply? 9 THE WITNESS: If it does apply, then I'm 10 equally concerned, I would say, in the same sense of 11 the habits of kids to do stuff that they don't think 12 is wrong, and it actually, within the copyright world, 13 is wrong. It's my world, a crazy world, but we have 14 artists and writers who put effort and time and their 15 lives into things, and then it's taken away without, 16 what I think, the proper renumeration. 17 But it's a sliding scale; it's balanced. 18 ARBITRATOR GULIN: But you would say that 19 there should -- and this is maybe outside of your 2.0 area, but in terms of that royalty rate, you would 21

think there would be a different rate for broadcasters

1	retransmitting than for webcasters.
2	THE WITNESS: Yes, I think it's more
3	graded, yes.
4	CHAIRMAN VAN LOON: Do you have questions
5	on recross?
6	MR. STEINTHAL: I do have some questions
7	now.
8	RECROSS EXAMINATION
9	BY MR. STEINTHAL:
10	Q Let's start with your informal survey of
11	13- and 14-year olds. I take it that artists like
12	Brittany Spears and N'Sync and Backstreet Boys, which
13	are Zomba artists, are right geared towards that age
14	group, right?
15	A Yes, but my informal survey actually was
16	a lot of 14- and 15-year old males who tend to be kind
17	of the more rock groups, which we have a couple,
18	though it's not our primary Jive label stuff.
19	Q Yes, but certainly those teeny-bopper, pop
20	music type fans that swarm around Brittany and
21	Backstreet Boys and N'Sync, they're your target as
22	well, right?

1	A You mean as a record label?
2	Q Yes.
3	A We sell to that audience, but I actually
4	think it's more it tends to be more male.
5	Q I didn't say female.
6	A No, but I'm saying on the web. The web
7	tends to be more rock. My experience, which is an
8	informal one, it's that stuff as well, but it's a lot
9	more of the kind of the rock kids, kind of male kids.
10	Q But you were saying you're worried about
11	displacement by children in that age bracket
12	presumably because Zomba is trying to sell albums to
13	that bunch of people that fill that demographic,
14	right?
15	A We sell yes, I mean college kids as
16	well. A lot of it's prevalent with college kids,
17	actually.
18	Q Now, Zomba has done a series of
19	promotions, hasn't it, with MTV and other webcasters,
20	designed to give notoriety to upcoming albums that
21	bands like Brittany Spears and N'Sync and Backstreet
22	Boys are going to release, right?

marketing number of done Α We've 1 initiatives with the webcasters, absolutely. 2 And the goal there is to get their image 3 and their product out as a preview before you release 4 right, so that people's mind sets 5 heightened about the upcoming Brittany album, 6 example. 7 Of course. 8 And when you license, for example, the use 9 Q of sound recordings, either on a 30-second clip basis 10 or a timed out download basis in advance of the 11 release of an album, you're doing so typically on a 12 no-charge basis, because you feel that people going to 13 those web sites will learn more about your artists and 14 go out and buy albums, right? 15 In some cases that's absolutely correct. 16 In a lot of other cases, those web sites take the 17 music and -- I'm not suggesting it's anything to do 18 with the people here -- there are some web sites, 19 2.0 which I think one or two of them are here, that without actually do use artists coming 21 Actually, there are some. 22

1	Q Can you specify any of the companies that
2	are webcasting here that you've got a problem with
3	that have not used the promotional materials that you
4	are talking about, pursuant to the voluntary
5	agreements with Zomba?
6	A You know, I don't have the exact I
7	don't know, is Launch one of those? Isn't Launch one
8	of yours?
9	Q Yes.
10	A I think Launch in the past has done that,
11	yes; quite considerably, actually.
12	Q And what are you referring to?
13	A Using our promo material I don't know
14	whether it's a video or if it's a recording or if it's
15	an image without our consent, yes.
16	Q Anyone else?
17	A There's other, but it's not what I do day
18	to day, but I'm sure there's lists.
19	Q But you don't deny, of course, that
20	resources have been spent doing voluntary, gratuitous
21	deals with MTV and Spinner, for example, in order to
22	get Brittany's image and get N'Sync's image and

1	Backstreet Boys' image and samples out there to the
2	consuming public, right?
3	A MTV's a very powerful organization, and we
4	use it, absolutely.
5	Q So in that respect, when you do deals like
6	that, you feel that the promotional value outweighs
7	any displacement value or else you wouldn't do it,
8	right?
9	A In the long term, absolutely.
10	Q Now, you were referring to these hand-held
11	devices and subscription services, and, of course, you
12	understand that subscription services that allow for
13	music-on-demand or even semi on-demand are not part of
14	this proceeding, right?
15	A Yes.
16	Q And so what you're really concerned is
17	that in the long term, after the period of time of the
18	present, that somehow or other the fee that this Panel
19	sets for webcasting within the limits of Section 112
20	and 114 will somehow or other have a residual negative
21	effect in your pricing with respect to licenses for
22	people outside the scope of that statute, right?

1	A I think it's two-fold. I think the first
2	part is what falls within the ambut of a statutory
3	license? I have a concern about that at one end, in
4	terms of kind of the gray areas that I talked about.
5	And, two, if I am partially correct that the statutory
6	webcasters or whatever I don't know how they're
7	called if that becomes much more predominant, which
8	I hope it will do, obviously, and that displaces
9	record sales, just of its own right that there should
10	be a fair and just compensation for the record
11	companies who put so much investment into this
12	particular creativity.
13	Q A big if in there, though, isn't there?
14	A In 15 years time, we'll have a better
15	idea, but, you know, I'll do my best to give you based
16	on my experience.
17	Q But you mentioned that you've experimented
18	with downloads and it's been a disaster, in response
19	to the Judge's question, right?
20	A Unmitigated disaster, absolutely, yes.
21	Q Well, you've gone right back into the fray
22	in a different way now, haven't you, with the Music

| Net deal?

A We've gone back into the fray. That's kind of difficult, as you were Music Net's attorney at the time, so I don't know if that's appropriate, but -- which was last week we did that deal. We have done a license arrangement with Music Net.

Q So isn't it true, Mr. Katz, that Zomba Recording Company has issued a license to a venture called Music Net, the sole purpose of which is to license on a subscription basis to consumers timed-out downloads and on-demand streams of sound recordings?

A Our view is, and we're more cautious than most, is that we have to embrace this and not be Luddites. Otherwise you're going to be left behind, and that you might as well recognize the circumstances and embrace. But at the same time, the terms that we got for that were fair terms as far as we are concerned in lots of different areas, including the pricing for what we put into it. And I'm hoping here for what the record companies put in, in terms of all these different functions and investments, that the performance rate is a fair rate for everybody.

1	Q But the truth is that, without getting
2	into the details of the deal, Zomba is now a
3	shareholder and licensor of content in a venture with
4	several other major labels, the purpose of which is to
5	facilitate time-out downloads and subscription-on-
6	demand streaming to consumers, right?
7	A It's absolutely part of a number of things
8	it's got investments in.
9	ARBITRATOR VON KANN: Timed-out downloads.
10	MR. STEINTHAL: I'll let the Witness
11	answer, if he can describe what a timed-out download
12	is.
13	THE WITNESS: This gets to the real gray
14	area, in a sense, because a timed-out download could
15	be I get the download, it's mine, I can do whatever I
16	want with it forever. That's akin to a CD purchase.
17	Or maybe I get it for a month, and basically after a
18	month I have to renew it to keep it and pay a smaller
19	amount of money. Or I keep it for two days or four
20	listens. It's various rules that attach to the use of
21	the file.
22	ARBITRATOR GULIN: So it's for a certain

amount of time. 7 THE WITNESS: Exactly. And then there's 2 questions -- and these gentlemen know much more about 3 it than I do -- there's questions of portability. 4 other words, can I only listen to it on my computer? 5 Am I allowed to put it on my hand-held device, which 6 I think the consumer's going to want to have total 7 flexibility to do whatever he or she wants to do with 8 9 it personally. So the Music Net ARBITRATOR VON KANN: 10 operation will involve downloads that have 11 limitations attached to them. 12 It will have permanent THE WITNESS: 13 downloads. It may have timed-out downloads. There's 14 lots of different things. 15 And the other kind 16 ARBITRATOR VON KANN: of thing that you were asked about, it will also do 17 some sort of subscription service? 18 That's the idea is to do a 19 THE WITNESS: subscription service, yes. But it also, I believe, 20 will supply other web sites with content. In other 21 words, you may go on through a different web site. To 22

get the Music from Music Net, it would be like a 1 2 subscription. ARBITRATOR VON KANN: And this is a 3 venture of the major record labels? 4 THE WITNESS: There's two ventures of the 5 There's a number of these out there. major records. 6 Music Net is one of them. 7 ARBITRATOR VON KANN: Are all the majors 8 participating in that, do you think? 9 THE WITNESS: Not in that particular one, 10 no. It's Warner, EMI, BMG, and we have a shareholding 11 in that now. There's another one called Press Play. 12 It used to be called Duet, which is Universal and Sony 13 and a web -- well, web player, Real. Is it Real 14 Networks or Real? I'm not sure what it's called. And 1.5 there's those two. And then there's third party ones 16 And it's very interesting, because we're 17 as well. obviously being asked to be both of them. 18 And the pitch with the Music Net one -- I 19 don't necessarily agree with it -- but from the Press 20 Play people, which is Universal, is that because it's 21 owned by AOL that really they're not so interested in 22

1	the music; they're more interested in driving
2	subscriptions into AOL. There's this whole kind of
3	debate going on as to
4	ARBITRATOR VON KANN: What's owned by AOL,
5	Music Net?
6	THE WITNESS: Music Net owns Warner, which
7	owns this whole debate's going on, which the world
8	is
9	ARBITRATOR VON KANN: Increasingly
10	peculiar place.
11	(Laughter.)
12	Are either of these services yet in
13	operation or are these prospective, Music Net and
14	Press Play?
15	THE WITNESS: Press Play I don't believe
16	is in operation. Music Net I believe is I've seen
17	it work, but I don't know if it's offering
18	subscriptions to the public yet. You might know more
19	than I do, actually.
20	ARBITRATOR VON KANN: You think it's
21	imminent if not yet
22	THE WITNESS: I think it's the much more

1	imminent one, yes.
2	ARBITRATOR VON KANN: Okay.
3	MR. STEINTHAL: Just a few more questions
4	of Mr. Katz.
5	BY MR. STEINTHAL:
6	Q You mentioned that one of you concerns in
7	the gray area was, for example, what casters that
8	provide the ability to skip forward to the next song?
9	A Yes.
10	Q Do you remember saying that?
11	A Yes, yes.
12	Q And do you understand that that's a
13	functionality that's permitted under the statutory
14	license?
15	A I don't know that to be the case. I don't
16	know if it's not the case or it is the case.
17	Q Do you know whether the RIAA has ever
18	licensed a service with a skip functionality?
19	A I don't know that one way or the other.
20	Q Okay. Let me ask you this: I mean I got
21	the impression from some of your answers that you're
22	not all that familiar with the services that our

clients offer. How familiar are you with, let me pick 1 a name, Listen.com and the radio service that it 2 offers? 3 I'm somewhat familiar. It's part of what 4 It's not the principle part. I've been on the 5 I have my Internet-only attorney update me. 6 My marketing people tell me what's going on. 7 don't have it -- you know, it's a time issue. One 8 doesn't have time as much as one would like. 9 Right, and I'm just trying to get a better 10 0 You're speaking about webcasters understanding. 11 generally, and I'm wondering how familiar both you are 1.2 service by service with the nuances to the extent 13 there are and differences between what Listen offers, 14 what Launch offers, what Radio Sonic Net offers, what 1.5 Spinner offers. I mean how familiar are you with the 16 different services? 17 I think in terms of categories, I have a 18 relatively good understanding. I think in terms of 19 But the difference specific ones, not as good. 20 between, say, a interactive and a non-interactive, I 21 22 mean I understand that completely and the gray area.

1	Q Well, who do you put in that gray area,
2	interactive?
3	A In an interactive one? I think Launch
4	might might and might not be. That's kind of the
5	cusp one, I believe, if I'm recalling correctly.
6	Q Anyone else you can think of that's in
7	that gray area that concerns you?
8	A I think if I went out of here and I went
9	through them, I probably could come back with some
10	answers, but as I sit here now, no.
11	Q Now, you talked about the concern about
12	people ripping copies off a stream, remember that?
13	A Yes.
14	Q As a practical matter, do you know what
15	percentage of the listening public at all does that?
16	A My survey is very informal. I don't have
17	any, as I said before, any solid surveys. It's just
18	assuming experience from speaking to people.
19	Q And you mentioned that your concerns
20	really grew from the kind of habits that consumers
21	were developing from use of services like Napster,
22	which you clearly said is a problem to you, right?

1	A That's correct.
2	Q You don't really want this Panel to punish
3	services that don't provide for uses outside of the
4	statutory license for the sins of others that have
5	created risks that are really what bothers you, do you
6	A I think that would be totally and
7	absolutely inappropriate to do. I just think that
8	there should be a fair payment for the use of the
9	music and the recording.
10	MR. STEINTHAL: I have no further
11	questions.
12	MR. SCHECHTER: I've got a couple.
13	CHAIRMAN VAN LOON: Redirect?
14	REDIRECT EXAMINATION
15	BY MR. SCHECHTER:
1.6	Q I want to go back to your hand-held device
17	ability to get music, and there's been a discussion
18	about displacement in that area, and I think Ms.
19	Steinthal's last round of questions talked about
20	subscription services and that. Going back to Judge
21	von Kann's reggae channel example
22	CHAIRMAN VAN LOON: Hypothetical.

1	MR. SCHECHTER: Hypothetical.
2	ARBITRATOR VON KANN: I know Bob Marley.
3	MR. SCHECHTER: I was going to say it
4	happens to be yes.
5	BY MR. SCHECHTER:
6	Q But under those, would do you have
7	concerns about displacement if you can walk around on
8	the street and listen to the reggae channel?
9	A My concern in that area is that what's the
10	difference between well, it's a marginal difference
11	between walking around with a CD player and walking
12	around with a portable device that gives you your
13	complement, for want of a better word, of reggae. I
14	do think that that's a much serious thing than walking
15	around with a general radio, yes.
16	Q You talked about the promotional values of
17	your deals with MTV. Are your deals with MTV for
18	either a specific CD or a specific artist or is it for
19	your entire sound recording repertoire?
20	A In terms of MTV, the channel?
21	Q Yes, the promotional deals that you were
22	talking about, the ones that Mr. Steinthal was talking

1	about. You talked about deals to promote a Christine
2	Aguilara CD or an N'Sync CD. Those deals are specific
3	to artists or specific to CDs; is that correct?
4	A Yes. It's not a Jive Record label
5	situation at all. No, it's specific artists that
6	you've got coming out and you want to create awareness
7	for or the particular recording.
8	Q So it's not your entire repertoire.
9	A No, no, no, no. No, that's a valuable
10	thing, and we want to be careful how we deal with
11	that. But for specific artists, yes.
12	Q And you're aware that this compulsory
13	license would apply to all of your sound recording?
14	A I am, absolutely, which is why I'm
15	concerned.
16	Q Yes. Is there a difference, in your view,
17	between your entering into these specific agreements
18	on marketing deals for particular artists and
19	particular CDs and the compulsory license at issue
20	here?
21	A I think there's a I mean I have a
22	choice what to do as a record label or music publisher
]	

1	with a specific artist. We'll look at it, we'll
2	evaluate each different situation. But that's a whole
3	different purpose. Here it's basically a situation
4	where our repertoire is available all the 20 years
5	that we've put in the business is available to the
6	webcasters, and I understand that. I'm just saying
7	that we should at least be paid fairly and properly
8	for that.
9	Q Is the promotional value of the specific
10	N'Sync deal different, in your mind, than the
11	promotional value of the compulsory license?
12	A Yes. I mean it's a timing issue again,
13	because we have the N'Sync or we had the N'Sync album
14	come out last week. It's the number one album this
15	week in the States.
16	(Laughter.)
17	Don't take anything for granted. And,
18	basically, if we can get as much awareness the week or
19	two before that album comes out or when the single
20	preceding the album comes out, that's the real value
21	from a marketing viewpoint. To have it played six
22	months later it's very nice and all that, but it

1	doesn't have the same impact. Although what it could
2	do, just to give you the later one, it could actually
3	take away from back catalog sales of CDs. So it's not
4	just the current CD I'm worried about; it's actually
5	the back CD sales.
6	MR. SCHECHTER: I have nothing further.
7	MR. STEINTHAL: Just one little thing to
8	clarify.
9	RECROSS EXAMINATION
10	BY MR. STEINTHAL:
11	Q You said you had a concern about people
12	carrying around portable devices and hearing music
13	that way. Do you know if there's anyone doing that on
14	this side of the table today, that's delivering our
15	services to be listened to on such portable devices?
16	A Whether you're doing it, I don't know. I
17	don't know if you're even planning to do it, which may
18	be a different question.
19	MR. STEINTHAL: I have no further
20	questions.
21	CHAIRMAN VAN LOON: Anything further from
22	the panel? Thank you very much.

1	THE WITNESS: Thank you.
2	(Whereupon, the foregoing matter went off
3	the record at 12:03 p.m. and went back on
4	the record at 12:11 p.m.)
5	CHAIRMAN VAN LOON: May I ask the reporter
6	to please swear the Witness?
7	MS. LEARY: If the witnesses can keep
8	their voices up.
9	CHAIRMAN VAN LOON: Yes. We've had that
10	request, and I'm hoping we can count on you to be
11	forthcoming.
1	
12	THE WITNESS: I will try.
	THE WITNESS: I will try. CHAIRMAN VAN LOON: Thank you.
12 13 14	_
13	CHAIRMAN VAN LOON: Thank you.
13 14	CHAIRMAN VAN LOON: Thank you. WHEREUPON,
13 14 15	CHAIRMAN VAN LOON: Thank you. WHEREUPON, CHARLES CIONGOLI
13 14 15	CHAIRMAN VAN LOON: Thank you. WHEREUPON, CHARLES CIONGOLI was called as a witness by Counsel for the RIAA,
13 14 15 16 17	CHAIRMAN VAN LOON: Thank you. WHEREUPON, CHARLES CIONGOLI was called as a witness by Counsel for the RIAA, having first been duly sworn, assumed the witness
13 14 15 16 17 18	CHAIRMAN VAN LOON: Thank you. WHEREUPON, CHARLES CIONGOLI was called as a witness by Counsel for the RIAA, having first been duly sworn, assumed the witness stand, was examined and testified as follows:
13 14 15 16	CHAIRMAN VAN LOON: Thank you. WHEREUPON, CHARLES CIONGOLI was called as a witness by Counsel for the RIAA, having first been duly sworn, assumed the witness stand, was examined and testified as follows: DIRECT EXAMINATION

1	A My name is Charles Ciongoli, C-I-O-N-G-O-
2	L-I.
3	Q And, Mr. Ciongoli, what is your current
4	employment?
5	A I am currently the Senior Vice President
6	for the Universal Music Group, North America
7	Operations.
8	Q And are you Senior Vice President in a
9	particular area?
10	A My job responsibilities primarily revolve
11	around the record business the labels, the
12	manufacturing, distribution, as well as music
13	publishing for North America.
14	Q Okay. I may not have been clear. Are you
15	the Senior Vice President for Finance?
16	A Yes, I am, Senior Vice President, Finance.
17	Q Could you describe for the Panel briefly
18	what your previous employment history has been prior
19	to your current position?
20	A I've been with the Universal Music Group
21	for about 11 years. I've held a variety of positions
22	within the Company, anywhere from Group Comptroller to

1	Vice President Group Comptroller, overseeing the
2	record operations, physical distribution,
3	manufacturing, music publishing, as well as all of our
4	record labels. I've been involved with a lot of
5	international operations, exploitations, as well as
6	mergers and acquisitions, most recently with the
7	Polygram acquisition in December of 1998.
8	Q And prior to your employment with
9	Universal, what was your career history?
10	A Prior to that, I was with the accounting
11	firm of PriceWaterhouse, now it is PriceWaterhouse
12	Coopers. I was with them for approximately ten years.
13	One of my large clients back then was MCA, Inc., which
14	now is Universal Music.
15	Q Okay. And after you were at
16	PriceWaterhouse, now PriceWaterhouse Coopers, did you
17	go to MCA?
18	A Yes, I did.
19	Q And have you basically continuously been
20	with MCA, which has now become Universal?
21	A Yes, I have, in a variety of positions
22	over the last 11 years.

1	ARBITRATOR VON KANN: Both of you are
2	failing miserably the test of keeping your voice up.
3	If you'd try to do it more, it would really help.
4	THE WITNESS: Okay.
5	CHAIRMAN VAN LOON: And don't take your
6	cue from her, because she's soft spoken, but keep your
7	voice up good and loud, if you can.
8	MS. WOODS: I was going to say I'll try,
9	but I don't have an easy time with that.
10	CHAIRMAN VAN LOON: If you can reach it to
11	the back row.
12	MS. WOODS: That's the problem that in the
13	past we've had. When the air system is on, it does
14	tend to present a number of
15	ARBITRATOR VON KANN: Well, you don't want
16	us to turn it off, I'm sure, so speak louder.
17	MS. WOODS: Well, I do, but I I was
18	going to say I was happy earlier, but I recognize that
19	I'm in the minority.
20	CHAIRMAN VAN LOON: There's some empty
21	seats one row right behind
22	MS. LEARY: Well, you know, I don't want

1	to be perceived as changing songs, but if everyone
2	understands that I'm just
3	ARBITRATOR VON KANN: I don't know. If
4	you could move up there, I don't think you'd probably
5	get electrocuted, so give it a try.
6	BY MS. WOODS:
7	Q Okay. I'm not sure where we were, but,
8	okay, I guess, could you describe briefly you did
9	this a little bit but describe the purpose of your
LO	testimony here today, Mr. Ciongoli.
11	A The purpose of my testimony is to provide
L2	and explain some comparative financial data relative
L3	to the U.S. record label operations as well as the
L4	North American music publishing operations.
L5	Q Okay. And in order to do that, what type
L6	of data do you provide?
17	A I have for the fiscal year ended June of
L8	2000, I have provided a P&L, or profit and loss
L9	statement, for both the music publishing operations
20	and the record labels for the U.S. company of
21	Universal Music.
, ,	O Now you ghate in your testimony that you

	provide income statements:
2	A Yes, that's correct.
3	Q And is that what you provided rather than
4	a P&L?
5	A They're one in the same.
6	Q Okay. At RIAA Exhibit Number 008 DR, if
7	you could take a look at that, Mr. Ciongoli. Is that
8	the income statement, P&L, that you provided to the
9	Panel?
10	A Yes. I'd just, I guess, for the record,
11	like to make one comment or correction. In the
12	header, it says, "For the fiscal years," plural,
13	"ended June 2001 and 2000." It is only for the fiscal
14	year ended 2000 for both the music publishing
15	operations as well as the record operations. At the
16	time, our fiscal year 2000 had not ended so that was
17	inappropriate labeling on these two pages.
18	Q If I could just clarify what you just
19	said. I think you just stated that fiscal year 2000
20	had not ended. Did you mean fiscal year
21	A Sorry, 2001; yes, I'm sorry.
22	Q Thank you. And I do have some extra

1	copies available of the exhibit. Does anyone
2	ARBITRATOR VON KANN: Is it the original
3	one or the corrected?
4	MS. WOODS: This is the original.
5	ARBITRATOR VON KANN: Let me just get
6	what's the number on it again?
7	MS. WOODS: 008 DR.
8	CHAIRMAN VAN LOON: Do you have one more
9	for my colleague?
10	MS. WOODS: Yes, indeed. But I should
11	note that this is a restricted exhibit, and when we
12	get to the point of talking about the specific
13	ARBITRATOR VON KANN: Now what is the
14	correction, I'm sorry?
15	THE WITNESS: It should be for the fiscal
16	year, singular, ended June 2000.
17	ARBITRATOR VON KANN: Right, okay. Thank
18	you.
19	CHAIRMAN VAN LOON: X out "s" and "2001
20	and."
21	THE WITNESS: Right.
22	BY MS. WOODS:

1	Q Mr. Ciongoli, just with respect to the
2	fiscal year data for June 2001, when for the fiscal
3	year 2001, excuse me, when did that fiscal year end?
4	A June 30 of this year.
5	Q Okay. I would like to note for the Panel
6	that I'm going to have just a bit more in terms of
7	public testimony, and then we are going to ask that
8	the rest of the session be closed as restricted, as we
9	will be discussing some of the specific numbers that
10	are set forth in Mr. Ciongoli's testimony, as well as
11	the exhibit.
12	CHAIRMAN VAN LOON: We'll ask the marshals
13	to clear all those extra people at the appropriate
14	time.
15	MS. WOODS: I'm not actually sure if
16	there's anyone in here who's implicated, but for the
17	transcript.
18	BY MS. WOODS:
19	Q All right. Mr. Ciongoli, turning back to
20	your testimony to page 2, could you tell the Panel,
21	without going into specific numbers, when you discuss
22	net A&R investment what that is?

1	A The label, net A&R investment, really
2	stands for net artist and repertoire investment. This
3	is, if you will, the residual amount in our profit and
4	loss statement relating to the amount of gross
5	investment with respect to the discovery or the
6	creative aspect of the business. We invest, as you
7	know, in artists, create records, create the recording
8	process, provide advances, pay advances. And what the
9	A&R investment the net A&R investment line item
10	represents is the difference really between the gross
11	amount of cash paid and the earnings that the artist
12	has earned either from the sale of a record or
13	ancillary exploitations. Therefore, the residual, the
14	amount of unrecouped cash paid, is effectively what
15	this amount represents.
16	Q And without going into specific figures,
17	do both record labels and music publishers have line
18	items for net A&R investment?
19	A Yes, they do.
20	Q Okay. Thank you. At this time, I would
21	like to ask Mr. Ciongoli to discuss the figures in
22	Figure 1, so I would ask that we go into closed

1	session.
2	CHAIRMAN VAN LOON: Is there anyone in the
3	room who is inappropriately present for a closed
4	session; that is, you should leave? You don't see
5	anyone? Then we'll go let the record note that
6	we'll go into the closed session at this point.
7	MS. WOODS: And we would ask that this be
8	at the level of restricted.
9	CHAIRMAN VAN LOON: At the restricted
10	level.
11	MS. WOODS: Thank you.
12	(Whereupon, at 12:21 p.m., the proceedings
13	went into Closed Session.)
14	
15	
16	
17	
18	
19	
20	
21	
22	

CERTIFICATE

This is to certify that the foregoing transcript in

the matter of:

Hearing: Digital Performance Right

in Sound Recording and Ephemeral

Recording,

Docket No. 2000-9 CARP DTRA 1 & 2

Before:

Library of Congress

Copyright Arbitration Royalty Panel

Date:

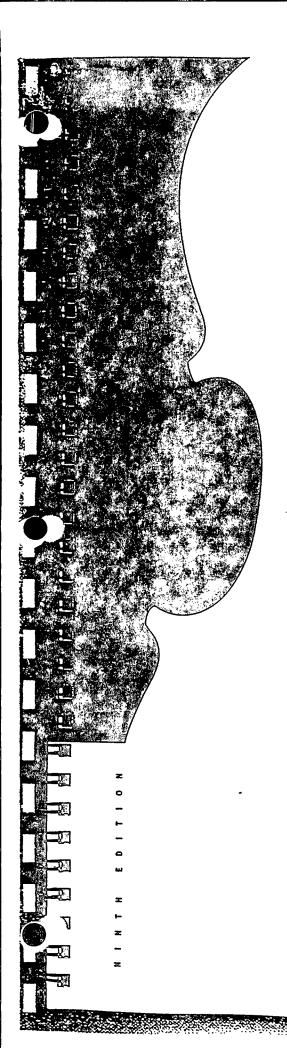
August 2, 2001

Place:

Washington, DC

represents the full and complete proceedings of the aforementioned matter, as reported and reduced to typewriting.

- Whate



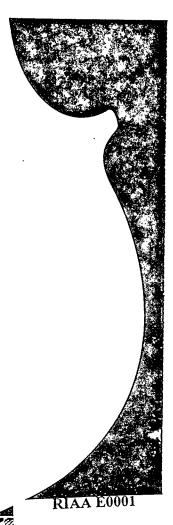


NATIONAL MUSIC

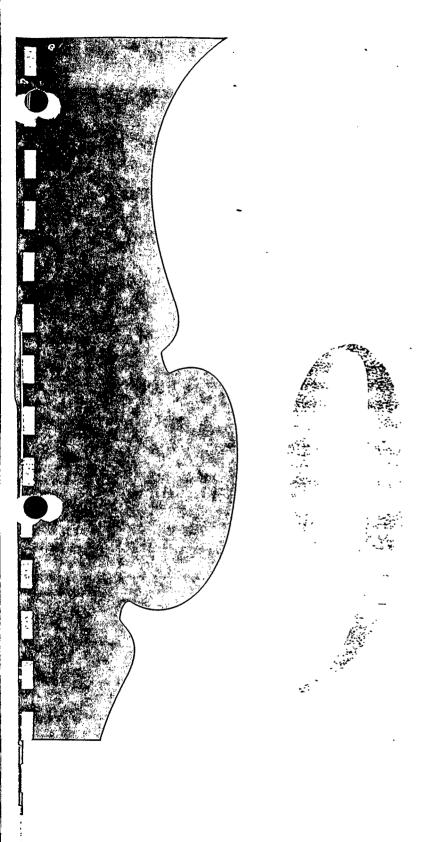
PUBLISHERS' ASSOCIATION

& THE HARRY FOX AGENCY, INC.

INTERNATIONAL SURVEY OF MUSIC PUBLISHING REVENUES



5%-10



CONTENTS

1	PREFACE
2	Chart 1: The Reporting Universe
3	EXECUTIVE SUMMARY
6	Chart 2: Total Revenue By Type of Royalty Income
6	Chart 3: 1998 Music Industry Royalties, The Leading Countries
7	Table 1: Master Survey Data, Total Collections
9	Table 1a: Flat Exchange Rates
11	Chart 4: 1998 Music Industry Royalties, All Respondents
12	RESULTS OF SURVEY
12	Chart 5: Performance-based Income
13	Chart 6: Reproduction-based Income
14	Chart 7: Distribution-based Income
14	Chart 8: Comparison By Region
. 15	Table 2: Determination of Mechanical Royalties
16	Table 3: Exchange Rates of Surveyed Countries
17	INTERNATIONAL YEAR IN REVIEW 1999
22	Piracy — Special 301 Review
25	COUNTRY PROFILE: CANADA
31	THE YEAR IN REVIEW: NMPA and the Music Publishing Industry
33	ELECTRONIC COMMERCE
25	
35 37	Appendix A: Categorization of Music Publishing Revenues
	Appendix B: International Involvement
39	Appendix C: U.K., Japan, Germany, Brazil & France Updates
49	Appendix D: Glossary of Terms
51	NMPA: A BRIEF HISTORY

The National Music Publishers' Association is pleased to present its ninth annual International Survey of Music Publishing Revenues. This report presents 1998 publishing income data from fifty-four territories.

Following a slight decrease of 1.1% in 1997, total publishing revenues were up 6.3% in 1998, to \$6.54 billion. Based on flat exchange rates, when comparisons are made between 1997 and 1998, global publishing revenues increased 5% in 1998.

Leading the way was the performance-based revenue sector, which posted an increase of 7.7% to \$2.9 billion. While there were significant increases in all sectors of performance-based income, the most impressive came from radio, which increased by 11.72%.

Reproduction-based income was also up, by 6.9% to \$2.75 billion. This was due mainly to the fact that income from phono-mechanicals — the largest sub-sector of reproduction-based income — rose 6% to \$1.9 billion. Despite a slowdown in synchronization revenues, which had been showing impressive growth for the past several years, that sector is expected to rise again in the coming years.

The impressive figures reflect a number of factors: the maturation of the music publishing market in the traditional revenue leaders — the major industrialized territories like the United States, Japan, and Western Europe — where copyright laws and their enforcement have historically been the strongest; the general improvement in copyright protection and collections in regions like Latin America and Southeast Asia; and the rebound of most of the economies affected by the Asian economic crisis. As the economies have continued to perform well over the past couple of years, it seems likely that our next reports will reflect healthy gains for the foreseeable future.

In addition, as the global music market continues to evolve, the performance of the U.S. dollar against foreign currencies is an important one to watch. For that reason we are again including territory income totals in European Currency Units (ECU).

While gains in copyright protection are continuing to be made in such areas as Eastern Europe, Southeast Asia, and Latin America, losses incurred due to piracy remain a major concern — and not just in those regions.

Posing a potentially huge threat in this area is the Internet. The NMPA and other organizations are continuing to lead the Eght against the unauthorized use of music on the Net, and while mutually acceptable terms with Internet entities is often the goal, sometimes litigation is necessary. Ventures aimed at maintaining some control over the use of music on the Net, such as the record industry's Secure Digital Music Initiative, are continuing to evolve.

That the music industry at large is changing at a sometimes breathtaking pace is no secret. Following the Universal/Polygram merger by only a few months were two blockbuster deals involving Time Warner: the acquisition of Time Warner by America Online, and the subsequent merger of Warner Music and EMI.

It will take months to determine the real impact of these deals, both of which are pending approval from a number of governmental agencies. However, if ratified, these transactions will mean the narrowing from six to four multi-national companies controlling most of the world's music in less than two years. This could mean fewer chances for artists, songwriters, and composers ... though opportunities may open up via new independent labels or the Internet.

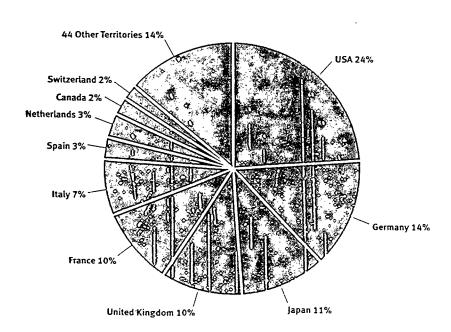
In an effort to help our readers gain insight into the international dimensions of the music publishing industry, we highlight a particular territory in each edition of the Survey. In this volume, we take an in-depth look at Canada, which currently ranks eleventh in global publishing revenues.

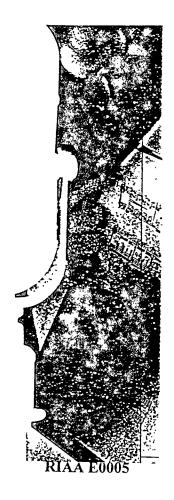
The NMPA Survey continues to gain interest and respect in both the domestic and international music and intellectual property communities. We are grateful to the participating territories for their continued support, and encourage all territories to join with us in presenting their regional information on this vital area of the global music industry.

Lawred P Murphy

Edward P. Murphy President & CEO

CHART 1 THE REPORTING UNIVERSE





EXECUTIVE SUMMARY

This is the NMPA's ninth annual survey of music publishing revenues. It was produced with the help of fifty-four countries, who provided information about their music publishing revenues in 1998.

All together, the reporting territories collected \$6.5 billion in royalty payments in 1998. This represents an increase of 6.3% from the music revenues of 1997, revealing a healthy rebound after several years of slowdown (see table below).

TABLE	1 MUSIC PU	BLISHING REVENUES	1994-1998 (\$M)*
1994	(58)	5,837.8	•
1995	(57)	6,208.7	(+6.4)
1996	(51)	6,224.5	(+0.3)
1997	(53)	6,157.1	(-1.1)
1998	(54)	6,543.5	(+6.3)

[•] The figures in brackets in the first column are the number of reporting territories that year. The figures in brackets in the third column are the percentage changes from the previous year.

The table also indicates a five-year increase in music publishing revenues of nearly 12%. This is due in part to the growing general acceptance of copyright in areas of the world where, previously, payment for the use of music was rare, and to the growing professionalism of the newer collection societies.

The 6.3% growth in publishing revenues compares with an increase in world soundcarrier sales, from \$38.6 billion in 1997 to \$38.7 billion in 1998, as reported by international record industry association IFPI (International Federation of the Phonographic Industry). That increase represents less than a 1% gain in real terms, although a 3% increase excluding currency changes.

The music publishing revenues of the top five territories (U.S., Germany, Japan, U.K. and France) represent 69.5% of the overall total, up from 69.2% in 1997. The figure for the top five has been plateauing for the past several years: in 1996 the top five accounted for 68.5%, while in 1995 they totaled 69%.

When looking at the percentage of total revenue derived from the top ten terri-

tories (including Italy, Spain, Netherlands, Belgium and Switzerland), a similar plateau is manifest: from 87% in 1995, to 86% in 1996, to 85.6% in both 1997 and 1998.

The performance of the U.S. dollar is also worth noting. Because survey details are reported to the NMPA in U.S. dollars, they are subject to currency fluctuations. As can be seen from the table below of the changes in the value of the Top ten countries surveyed (TABLE 2), all nine currencies rose in value against the dollar.

We have again included a table of the music publishing revenues of all the territories surveyed at flat exchange rates. This table can be found on pages 9 and 10. Based on flat exchange rates, which partially eliminate fluctuations in exchange rates when comparisons are made between years, global publishing revenues rose 5% in 1998, to \$7.21 billion.

The effects of the Asian economic crisis continued to be felt in that region, though there were strong signs in 1998 of a recovery; indeed, music publishing revenues for Southeast Asia were up 12% in 1998. There are still some troubling spots, however: Indonesia

was down 45%, and Taiwan fell by 22%. China, which thanks to more efficient means of collecting revenue in 1997 showed an amazing 310% increase in revenue, came back to earth in 1998. While the \$2.09 million it collected in 1998 reveals a 36% dropoff from 1997, that same figure still represents a 161% increase over 1996, before the improvements in collection went into effect.

At \$68.84 million, the value of music royalties in Eastern Europe again surpassed that of Southeast Asia. Following a 33% growth in revenues in 1997, revenues again rose by an impressive 49% for 1998. A continued expansion of commercial broadcasting in the region, as well as steadily growing soundcarrier rates in several countries, have combined for a trend that should continue in 1999 and beyond.

Although piracy and economic uncertainty have been major factors of late in Latin America, the territory still showed a 6% growth in 1998. While during the mid-90s the region accounted for under 3% of world music royalties, in 1997 that figure rose to about 3.4% and continued to gain slightly in 1998, to about 3.5%. If the world appetite for Latin music continues, that number should continue to increase.

Despite the collapse of the Brazilian economy in late 1998 — caused in some part by the Asian economic crisis — music sales were not affected drastically, though a consistent pattern of growth was disrupted by a loss in 1998 of a not inconsiderable 16%. Concerns continue in the region's largest country — 1999 figures are likely to show another hit — though the worst is probably over.

TABLE 2			
Country	Exchange Rate % 12/31/98	Exchange Rate % 12/31/97	Change
U.S.	1.0	1.0	(0)
Germany	0.59640	0.55617	(+7.2)
Japan	0.00752	0.00751	(+0.1)
U.K.	1.65870	1.65071	(+0.5)
France	0.17790	0.16629	(+7.0)
Italy	0.00060	0.00057	(+6.5)
Spain	0.00701	0.00656	(+6.8)
Netherlands	0.52920	0.49346	(+7.2)
Belgium	0.02890	0.02698	(+7.1)
Switzerland	0.72520	0.68432	(+6.0)

▼ Continued on page 5

Y								
MUSIC PUBLISHING REVENUES IN THE MAJOR TERRITORIES OF SOUTHEAST ASIA 1996-1998 (\$M)*								
COUNTRY	1996	1997	% Change	1998	% Change			
China	0.80	3.28	+310	2.09	-36			
Hong Kong	14.01	14.42	+3	14.85	+3			
Indonesia	1.59	1.00	-37	0.55	-45			
Philippines	0.55	0.35	-36	0.37	+6			
Singapore	3.49	2.99	· -14	3.50	+17			
South Korea	24.42	14.17	-42	19.44	+37			
Taiwan	1.59	1.03	-35	0.80	-22			
TOTAL	46.45	37.24	-2	41.60	÷12			

^{*} The Indian sub-continent and Japan are excluded from this table, as are Malaysia and Thailand, which did not report revenues in 1997 or 1998.

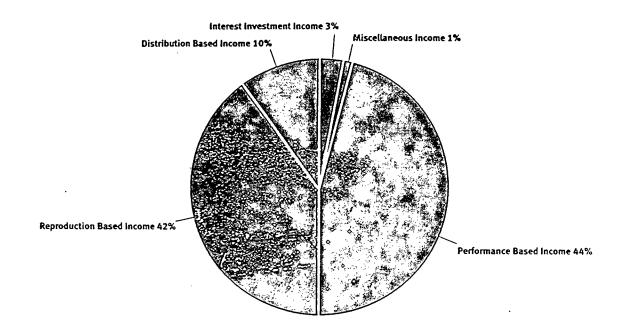
MUSIC PUBLISHING REVENUES IN THE MAJOR TERRITORIES OF EASTERN EUROPE 1996-1998 (\$M)						
COUNTRY	1996	1997	% Change	1998	% Change	
Czech Republic	3.44	8.17	+138	12.44	+52	
Croatia	1.25	1.18	-6	4.61	+291	
Hungary	13.07	15.75	+21	17.9	+14	
Poland	15.22	19.52	+28	32.44	. +66	
Slovak Republic	1.83	1.61	-12	1.45	-10	
TOTAL	34.81	46.23	+33	68.84	+49	

^{*} Bulgaria and the Russian Federation are excluded from this table, as they reported only negligible income for 1997 and 1998.

	Julia Kevekoes i	A THE MAJOR TERRI	TORIES OF LATIN AME	RICA 1	996-1998 (\$M)*
COUNTRY	1996	1997	% Change	1998	% Change
Argentina	85.92	103.40	+20	116.41	+13
Brazil	63.22	69.45	+10	58.16	-16
Chile	5.56	5.99	+8	6.22	+4
Mexico	15.68	34.73	+121	46.16	+33
TOTAL	170.38	213.57	+25	226.95	+6

CHART 2 TOTAL REVENUE BY TYPE

1



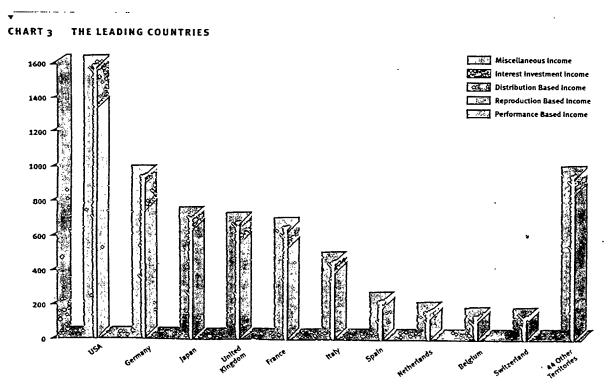


TABLE 1: MASTER SURVEY DATA 1998

S Millions		Performance-	-Based Income			Repr	oduction-Based I	ncome
2 Millions		24.V./	LIVE TOOK	2015年1月1日	1	PHONO	SYNCHRO-	PRIVATE 2500
	RADIO TEL	SATELLITE ?	& RECORDED	TOTAL		"MECHANICAL	TRANSCRIPTIO	R COPY
USA - LEATHER	232242.03	274.69	181,22	697.94	3	\$530.14, Tel		MA Vanda NA
Germany	49.00	94.37	200.97	344.34		226.07	173.18	17.99
Japan W	95.46	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		251.71		, 316.90	. 72.74	5.14
United Kingdom	62.23	69.75	115.58	247.56		286.08	50.50	1.51
France The Control	F-2-1027-4	120.40			100	.31.117.35 5€ 70	176.24	23.54 1 6 7 %.si
Italy	16.48	76.07	229.05	321.59	اا	56.28	4.64 63.57	8.58
Spain (C)				68.75 🖫		天 派51.84 33.60	11.98	・ / 11.73 会当 () () () () () () () () () (
Netherlands	6.88	36.34	38.36	81.58 ************************************		33.60 ∴∺24.36	23.85	2.50 N/A 2015
Belgium	TE 11.88 🕃	-	25.23 25.23	€60.74 \$° 59.46		21.63	5.69	2.21
Switzerland	15.61	18.62 30.44		رور \$55.30 کېنې کانې	-	42.13	4.52	-
Canada	ر. 18,52 سيزيد 5,74	23.23	6.55. 45.51	74.47	1744	19.68	9.27	. 12.7. 12.18/Ω 12.6. N/A
Argentina ^{co} Australia/N.Z. ^{co}				835 E 42.99 X	200	₹₹¥42.95 ··	15.99	
Sweden	ى: 7.83	14.72	17.04	39.59	~	26.37	N/A	N/A
Denmark	::::::::::::::::::::::::::::::::::::::			####35.35 \	-	221.38	∴20.5.88 £	25.150. 0.26
Brazil	4.44	15.15	38.57	58.16		N/A	N/A	N/A
				-	35	S\$€23.70 .>/-		SERVICE NA POST CONT.
Finland	9.15	8.53	10.28	27.95	1	8.55	0.72	0.99
Norway	····· 6.57	13.14	TO THE WAR	······································	*	14.25	N/A	N/A
Poland	4.61	11.15	4.96	20.73		6.59	0.07	0.74
Austria	N/A		نار کار کار کار کار کار کار کار کار کار ک	ANA F.	12	10.23	في 6.3 6 في والمنظم المنظم	<u> </u>
Portugal	0.80	3.71	12.59	17.10		10.63	1.79	N/A
Ireland	3.39	, ··· ~ 8.56 🖔	9.23	21.19	31	TO ANY TELEPROPERTY.	THE WAR	THE WAR TO SEE
South Korea	2.53	3.45	10.08	16.06		2.76	0.13	0.10
Greece 🧭	··、""学院 5.97 ···	5.97	∵ 5.97 `	岩岩湾,17.90至		1.30 D	N/A	THE STATE OF THE S
Hungary	0.78	3.90	6.77	11.45		2.37	0.68	1.16
Israel		1.49	, 1.76	11.00		2.81	. 1.11	, N/A 🧺 🔗 . 🐣
Hong Kong	2.17	5.26	6.30	13.72		0.14	0.05	N/A
Czech Republic	1.02	1.66	2.76	5.44		4.14	0.58	0.05
South Africa	N/A	N/A	N/A	N/A		8.12	2.66	N/A
Chile '	1.27	3.81	N/A	5.08		0.63	·· N/A	* * * * * * * * * * * * * * * * * * *
Republic of Croatia	1.37	1.37	N/A	2.75		1.71	N/A	N/A
Uruguay 1997	(1) (1) (1) (1) (1) (1)		ું, પેક, (.2.5 5 ડ્ર		4.7	े (दुर्श ा.15 ू		i gladista (H.W.A. stantastik takta).
Singapore	0.13	0.19	2.88 A 1272 Martin (1918)	3.20		0.17	N/A 22552-11/41-11	N/A Complete and Patter From Male Report Fit
Columbia Turkey	0.02	المرية المري 1.32	0.04	#####################################		0.79	N/A	N/A
Aceland RESOLUTION	2.0.0 2.4 co navenizaca	1.52 ************************************	0.04			0.79 27 TT 0.71	" TIESENA YE	
Peru	ر :	در وو. بر رود برزاری 0.07	0.68	0.86		0.32	0.94	N/A
fChinal System XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	engers engen	HATTARIZINIA 13	O.OO * Ana Companya :		1	%≥0.02	** \\\ 1199 373	·
Russian Federation	0.29	0.43	0.75	1.47		0.07	N/A	0.01
Slovak Republic					1 ×			FERENCO 1 PER TUE
Romania	0.50	0.07	0.26	0.83		0.09	N/A	0.04
Ulthuania			0.04	TYSE 20.813	12	0.03		
Taiwan	0.15	0.29	0.16	0.61		0.19	0.01	N/A
Indonesia 1	EDITO 103 A	2.2-0.15	第八章0.21	ACCO.3929	12	NO.16 7 2	. <u>₩</u> ₹0.00 }@	150 ENO.00 S-355 ENA
Senegal	0.04	0.01	0.34	0.38		N/A	0.01	N/A
Philippines	CIL 270.15	THE PARK TO	0.10	777 CO.25 KP	逗	£38380.01781	32220.08 X	
Zimbabwe (1)	0.07	0.09	N/A	0.16	-	N/A	N/A	N/A
Burkina Faso	20:03		0.01		30	\$2.750.02		。如此是如本文学
India (1)	N/A	0.04	N/A	0.04		N/A	N/A	N/A
Egypt Face Significant					37	ł		10000000000000000000000000000000000000
Bulgaria	N/A	N/A	N/A	N/A		N/A	N/A	N/A
Estonia				EL PRESIDENT.	38			ECCENA INC. SOCIE
Ghana	N/A	N/A	N/A	N/A	1	N/A	N/A	N/A
Total	\$039.70	\$981.05	\$1,259.02	\$2,879.77		\$1,918.54	\$753.70	\$78.85

⁽¹⁾ Fiscal Year-end 3/31/99.(2) Fiscal Year-end 6/30/99.

	Reproduction-Based	i income centinued	Dis	tribution-Based I	ncome				
72	REPRINT OF PRINT		SALE O	F RENTAL/		I Ma Interes	r - 3-1-3-5-	1998	
	Music	TATOLE, TOTAL	T PRINTE		TOTAL	INVESTM	ENT	GRANI	
L	第一个	CAT 287641.67	4 2 2 3 3 7 3	1988 ESWI	TASS 3233.7				In ECU 3.1365,185
	N//	417.25		•	140.9				_
1	N/A	394.77	1 13713 7118.68	35.57	7. 7.17.54.2	;	5 = 12.20.00	1	5 800.57 4 <u>3547</u> 601.29
_	N/A	338.09	65.11	N/A	65.1			1	_
	N. S.	C-SE317.14	2.22.23.34.83	N/A	54.8	1	6.22 R 226.0	1	5 573.82 4 55 155 1
	N/A	69.50		R/A	20.5			1 11.2	
	N/A			DOSE N/A	SEE LE COM	C 3255 10.9			6 379.09 3 3 2 3 177.04 2
-	N/A	48.16	21.35	N/A	21.35				
	N/A	28.21 A8.21	A STATE OF THE STA	Z STANA	THE STREET	0.00		1.	- 10.55
	N/A		24.24	0.54	24.78			and an amount to Kind Coll and it a	
4 2	TELEVISION N/A	46.65	13.84	XXXXXXX N/A		311			102.46
1	N/A	28.96	N/A	N/A	N/A	4.05			
	0.67	259.61	A STATE OF NA	M/A	A STANIA	128		1	22.04
₮	N/A	26.37	18.77	R/A	18.77	0.84		A AND THE PROPERTY OF THE PARTY	
3 4	AND THE PROPERTY OF THE PARTY O	27.52	THE THE STATE OF T	AN SECTION	THE WA	77.6.44		1235 (327 69.33	
3 .	N/A	N/A	N/A	N/A	N/A	N/A	N/A	58.16	
Married .	MACONTACTOR OF MICHAEL	y 30.29	2.0.04	.0.03 يا المنظمة المنظ		X WAR TO ZAVA		46.16	.,,,,
1,	N/A	10.26	4.43	N/A	4.43	0.94	0.15	43.72	
÷ ÷	AND STATE OF THE NA		「数記的かan/A」	MA ANA	State of 19 N/A	TOTAL STATE N/A	· · · N/A	33.96	2
1 12	N/A	7.39	N/A	N/A	N/A	4.30	0.02	32.44	27.77
-	N/A	18.80	9.45	0.05	9.50	2.45	0.47	31.22	26.72
1 .	N/A	12.42	N/A	N/A	N/A	N/A	0.07	29.59	25.33
1 -	題歌を紹う、「N/A	'-'N/A	N/A	N/A	N/A	0.38	0.14	21.71	
r A	N/A	2.99	0.27	N/A	0.27	N/A	0.12	19.44	16.64
		1.30	A/M.	N/A	N/A	. N/A	0.05	19.25	16.48
	N/A	4.22	N/A	N/A	N/A	2.21	0.01	17.90	15.32
	in rate of the section of N/A.	3.92	. 3.7 N/A	" · · · · N/A	N/A	1.02	N/A	15.94	13.64
::	N/A	0.18	N/A	N/A	N/A	0.37	0.57	14.85	12.71
	0.02	4.78	N/A	N/A	N/A	1.05	1.17	12.44	10.65
	N/A	10.78	N/A	N/A	N/A	0.50	N/A	11.28	9.65
1	% ಸವಚಿಸುವರು ಬ್ರೇ. स/A	. 0.63	MA N/A	" N/A .	, N/A	0.51	∴ N/A	6.22	- 34 5.32
17	N/A NAVE STORY OF THE STATE OF THE ST	1.71	0.15	N/A	0.15	N/A	N/A	4.61	3.94
14	ANALE . WINDOWS	1.43	THE PLANT NA	N/A	N/A		S. S. A. SEN/A	A. 1977.24.60	
-	N/A THE POST OF THE STATE OF THE STA	0.17	N/A	N/A	N/A	0.13	N/A	3.50	2.99
	N/A	0.79	-JAMES TO NIA	A Z Z Z Z Z Z M/A	STEEL BEN'A	.0.45	1.08	1.	26.01.22.91
2	AND THE RESERVE OF THE PARTY OF	0.79	N/A	N/A	N/A	0.71	0.13	3.02	2.58
	N/A	1.26	Table State NA	N/A	TEN/A	ZI ZI ZI ZI NA	ELECTION OF	\$2.58 E	3372213
4	0.08 C 0.08	1.20 1.20 1.20 1.20	N/A	N/A	N/A	N/A	N/A	2.12	1.81
-	N/A	0.07	THE THEOLIA		THE VEDVA	TERM THY.	NICESSA A	2,09	79
	The second se	0.07 200 200 10 10 10 10 10 10 10 10 10 10 10 10 1	N/A	N/A	N/A	N/A	N/A		
	N/A	0.12	Design Strain		DATE SENA	20.08	###ZESD:13	以名类125 1251	3247
3		EEEE 0.03	N/A	N/A ETPERANTE	N/A	0.32	N/A	1.27	1.09
	N/A	0.19	N/A		1	ME NAS	STREET, NA	20.84	
5	0.00			N/A	N/A	N/A	N/A	0.80	0.69
	N/A	0.01	AND THE RESERVE			A STATE OF THE STA	TAN SEE STATE	FEET 122035	1002380475
2	W/A	13 20.09	N/A	N/A	N/A	0.01	N/A	0.40	0.34
	N/A	N/A	N/A		1		0.01	第2037 至	WEE 2032 Y
57	THE SHIP OF THE SH	0.08		N/A Entre de la companya	N/A	0.02	0.01	0.18	0.16
	N/A	N/A			,	BUZIALIMA	ACT SEE N/A	经基础的13 .4	
1	N/A		N/A	N/A NET EXECUTE THE LITTLE TO	N/A N/A	0.01	N/A ·	0.05	0.04
	N/A	81/4	N/A				WALL TO STATE OF THE STATE OF T	WWW.	20.00
3	Service N/A	S WE END	THE RESIDENCE TO	N/A ≟-≦-^F	N/A	N/A	N/A	N/A	N/A
	N/A	N/A	N/A			STALE CENTAL	CONTRACTOR OF	STORY WAS	TAX XXIX
	\$0.77	\$2,751.87	\$617.33	N/A \$45.26	N/A	N/A	N/A	N/A	N/A
4				343.26	\$662.59	\$201.30	\$47.95	\$6,543.48	\$5,601.22

TABLE 1A: FLAT EXCHANGE RATES

\$ Millions		Performance	-Based Income			Ωe	production-Based	Incomo
	经过基本		TELIVE E		Ħ	इंद्रुक्का अनु दूर्	SYNCHRO-	NEW John Steil Fallen Seit Seit.
	RADIO		& RECORDED	TOTAL		MECHANICA	TRANSCRIPTION	PRIVATE COPY
DSATES SECRETARION	242.03 E	75,692	Z 22 81.22 32	57.7697.94		332530.143	SECTION OF	A A Section 0.00 Telephone
Germany	57.39	110.54	235.40	403.33	1	264.80	202.85	21.08
dapan Standard	三三二19,24至	674	80.44	314.43	12	395.85	90.86	C. C20.674 TO CULTUM
France (1)	27.32	138.28	82.78	248.37		134.78	202.40	27.04
Winited Kingdom 1522	38.05 A	\$3.55.06 Z	EXE 107,8235	230345	3	₹ 3 266.87.∑	257.5°47.1175	TENEDIAL TRANSPORT
Italy	17.28	79.77	240.22	337.27		59.02	4.87	9.00
Spain Service Control		247.96 P	18130	NEW 80,83 Z	は	经经验60.95%	2 12 7 A 7 C &	至3.79
Netherlands	8.11	42.84	45.23	96.17		39.61	14.12	3.04
Belgium 14	20201213.98 B	39.03	5 5 18.46	S671.47.2	1/3	128.67 7	28.06	0.00
Switzerland	18.72	22.32	30.26	71.30		25.93	6.82	2.65
Canada 22 20 20 20 20 20 20 20 20 20 20 20 20	20.87型	214334:30区	35 537,13(1)		3	22.47.47.2	5.09	**************************************
Australia/N.Z. (2)	12.42	24.08	13.44	49.94		49.90	18.57	0.00
Argentina (2) 英兴运营资	泛系第5.73	23.22	### 245.48	-\$474.43 \	133	查2019.67万	54 592730	不 第一个0.00 公司
Sweden	9.57	18.00	20.84	48.42	11	30.44	0.00	0.00
I Denmark	28.00基		16.01	40.81	1.22	24,68	6.79	0.00
Brazil	5.52	18.82	47.93	72.27		N/A	0.00	0.00
Romania (2)	20.80	班到是2.86 公	10.87	£2534:5375	爱	经203.61构	7.8 2 6.05 6 7	777 (1.56 7.7 PAGE
Finland	10.72	10.00	12.05	32.78		9.87	0.84	1.16
Poland ***	6.57	75.87 ³	7.06 °C	29.50	124	9.37	. شد 0.00 کندن کی تا عد	1.05 - 2 17 1
Mexico	1.50	9.20	5.10	15.80		23.70	6.60	0.00
Austria (A. A. A	3. N/A .;	A A & A 0.00 A	0.00	(*************************************	1:21	11.99	24.24.7.45.22	######################################
Portugal	0.92	4.28	14.50	19.70		12.24	2.06	0.00
South Korea	3.93	5.37	15.68	完新24.98 %	72	4.30	0.20 27	ECCEPOIS RESPONDE
Hungary	1.21	6.05	10.49	17.75		3.68	1.06	1.80
Ireland	(注) 2.66 で	9.24	2.9.96 27	22.86	3	STATE WAS	32,000,5£	TELLES O. OO. FULL TRANS
Israel	10.28	1.98	2.34	14.61	1 1	3.73	1.48	0.00
Greece Call Control	<i>- 5.</i> 97, <i>2</i> €	注题5.97.温	785.5973E	27.90 G	37	1.30	0.00	12 10.00 MESTICAL
South Africa	N/A	0.00	0.00	0.00	1 1	13.08	4.29	0.00
*Norway 🍰 😁 👵 🚉	. A.A. is .0.00 . *		0.00	Sec. 0.00 🔀	-31	元。16.46至	7. SEE 0.0025	######################################
Turkey	0.09	6.63	0.00	6.71		3.98	0.00	0.00
Hong Kong States, 1999	じん。終 2.17 第	(#FFC)5.26TO	是多是6.31 完	13.74	13	20.147	255000532	20.007XX
Czech Republic	1.15	1.88	3.13	6.17		4.69	0.65	0.06
Ichile 282 Land	See E 21:48 TV	4.43	44.50.00 S	(1.7.5.91 P	2	0.75	0,00	0.00
Uruguay	0.18	0.29	3.94	4.40		1.77	0.44	0.00
Columbia		E2320.3745	1.80	於是2.92至	22 :	(Case 10) (10)	> ≥ (\$\d)(0)=20.5	33-500000000000000000000000000000000000
Singapore	0.15	0.22	3.37	3.74		0.19	0.00	0.00
Republic of Croatia	MENDEL STANDAILS OF THE		23.50,00	第235至	25	0.50.47	20.00 Es	W 40000 W 4000 W
Peru	0.15	0.10	0.96	1.20		0.45	1.33	0.00
Hiceland			20.00	253399.20	53 :	37.80.82 J	0.00	20,00
Endonocie Serve Trans	N/A	0.00	0.00	0.00		0.02	1.98	0.00
Andonesia Socialista Slovak Republic	1933/5070	\$3050.545E	20.7233	23334363 4	33	35.00.55PE	0,000	V 80.00
Storak Kehantif	0.63	0.54	0.18	1 75		0 17	0.00	0.04
Malwan Lithuania	**************************************	24.0440,3433	0,1931	2860723	22/2	65 56 A 22 38	0.012	20.00
	0.25	0.55	0.04	0.81	- 1	ብ በ 3	0.00	81.64
Philippines: Senegal		9651878 C CO 333	MEET AND THE	281L03737	2 48	× 450.0194		0.000
-c.110501	0.04	0.01	0.38	0.43	1	A1/A	0.01	0.00
Zimbabwe (2) AFS	LAND MEN LA SE	20192	2532 40.00 TE	12.033	22 à		D20200025	20,00 Decree
0011011010	0.04	0.01	0.01	0.06 1	- 1	0.02	A A 7	0.00
India (1)		0.05	505 520.00 TO	公交 0.05 公		0.00	9:50:00 U.S.	20.00 do 200.00 do 2
Massian reactation	0.00	0.00	0.00	0.01 1	- 1	0.00	0.00	0.00
Egyptaria Bulgaria	entropy NASS	\$3.00.00 3	·苏西、亚 0.00 (1)	20.00 M		XXXXXXXXX	0.00	20.00
20.50.12				- 1	- 1			
Estonia Ghana	PARTIES SELVE	*ATT NEWS	A MARINE CONTROL	alcaem.	613	ere ya		
					\perp			
	\$710.92	\$1,064.87	\$1,409.48	\$3,185.27		\$2,107.37	\$851.88	\$92.80

(1) Fiscal Year-end 3/31/99. (2) Fiscal Year-end 6/30/99.

Reproduction-Based Income continued			Di	stribution-Based I	ncome				
	REPRINT OF PRINTE	·n	SALE (OF RENTAL/	•••	INTEREST		1998	
	Music	: TOTAL	Music	ED PUBLIC LENDING	TOTAL	INVESTMENT	Misc.	GRAND TOTAL	in ECU
3	A 20.00	641.67	Z 333.7	3 E 0.00	233.73	1 TELEPHONE 20.16 250			755 365.18 T
	N/A	488.73					0.34	1072.87	
3	AVA STATE STATE	T. 493.12	2. 13.6	875 44.43	63.11	1	0.08		747.12
E3	N/A	364.22	54.8	•-•		1	29.91	•	- 1
1	20.00 PAGE 1	<i>4836</i> 31538	3 3 3 5 65:1	1		7244.23	30.04 4.04	731.85	
2	N/A	72.89						t t	539.02
8	DEATHER STATE OF A	149.48				1	N/A N/A ^{MA} SSESSES	463.46	
ı	N/A	56.77			25.17	15.50		243.17	
33	THE STATE OF THE S	236.73	i		\$67.385£0.00	F	N/A	193.62	165.74
	N/A	35.41			24.89	*****************	•	6	还是120.60
Ĩ	X0.00	52.56				7.09	N/A	138.69	118.72
57	0.78	69.25				3.55 ago	a,,, g	3456日132.25	SEC 113.21
OSE A		28.94	1		0.00	1.49	0.09	120.77	103.38
(B)	0.00	30.44			00.00 C	3.4.05	8.93	7116.35	经第199.59
Œ.		30.44			18.77	1.03	1.15	99.81	85.44
				P.	0.00	发展企业7.43 工。	0.02	79.74	68.26
	N/A A STOLET AND THE STORE AND ADDRESS AND	N/A			0.00	N/A	N/A	72.27	61.87
نجتها		5.22	Add to the page of the			13.42 ·	. 0.00	53.17	45.51
R	0.00	11.87	4.43		4.43	1.10	0.17	50.35	43.10
•		10.52	The state of the s	N/A	00.00 Professional	6.11	0.03	46.16	39.52
	0.00	30.29	0.04	0.03	0.07	0.00	0.00	46.16	39.51
10		역학자 22.03	9.45	0.06	, 9.51	2.87	0.55	34.95	29.92
,	N/A	14.30	N/J	N/A	0.00	0.00	0.08	34.08	29.18
Ł	THE SHEW N/A		0.27	· · · · · · · · · · · · · · · · · · ·		N/A	0.18	30.08	
,	N/A	6.54	N/A	N/A	0.00	3.43	0.02	27.74	-55
(** 2:2 ** . N/A =	.0.00 ين يا در در در	N/A	N/A		0.42	0.02		23.74
`	N/A	5.21	N/A	N/A	0.00	1.35	0.00		20.05
'n	ALE N/A	1.30 سند در	0.00	- N/A	0.00	770 Alg. 1 N/A 11	0.05	21.17	18.12
_	N/A	17.37	0.00		0.00	0.80	ľ	19.25	16.48
	0.00	16.46	0.00		0.00	0.00	N/A	18.18	15.56
	· N/A	3.98	0.00	· · ·	0.00	3.58	0.00	. 16.46	14.09
	N/A	0.18	- Frankling		29.00 O.00		0.65	14.92	12.77
I	0.02	5.42	N/A	21	0.00	0.37	0.57	14.87	12.73
	BERGE SAIA	(2.73)	THE REAL NA		0.00 Tall£0.00	1.18	1.33	14:11	12.07
	N/A	2.21	0.00	0.00	0.00	हेक्के के स्ट्रिक्ट (0.59	N/A	7.23	6.19
35	0.00	0.00	0.00		0.00 10.00	0.48	N/A	7.10	6.07
1	0.00	0.19	0.00	0.00			1.69	52.5.5.32	建造版4.55 型
	0.00	1.47	20.15	0.00	0.00	0.16	0.00	4.09	3.50
	0.00	1.77	0.00		. 4-2-	20.00 PC	· 0.00	3.97	3.40
₩.	0.00	0.82	25.00	N/A 至0.00 最高過去	0.00	N/A	N/A	2.98	2.55
-	0.08	2.08	0.00	, COOL SECTION OF THE	0.00	0.00	_0.00	2.82	
	THE RESIDENCE OF THE PARTY OF T	0.55	This data seem no	N/A Department	0.00	N/A	N/A	2.08	1.78
	N/A	0.19	0.00	F. \$555 [秦] 秦] 秦] [[] []	X65-83 E 0.00	N/A 1000 0.01 1998	N/A	31.92	1.64
13	0.002								
	N/A	0.03	1	00.00	S. 2750'00.	2020 0.00 0.00 0.00 0.00 0.00 0.00 0.00	\$20.00 T	0.95	0.81
	POSTAGE AND THE	entanzasan a s	N/A	N/A	0.00	N/A	N/A	0.84	0.72
	N/A	0.01	21-245-25-40-00	PARTICIPATION OF	\$7.23E10.003	N/A 12 10:04 75 75	3.0.02	A. 30.55	0.47
1 5	2000 CO 2000 CO	0.01	0.00	N/A	0.00	0.02		0.46	0.39
, -	0.00	0.09		SERO TELLNIA	E 20.00	0.03	0.02	- 0.39 X	
	O.OO				0.00	N/A	N/A	0.15	0.13
	N/A	0.00	FEET - 12 0,00	NA CASE CONTRACT	3.00,00	4.0.01	1	0.06	
								0.01	0.01
-	The state of the s	00.00 Personal	20.00	STATE OF THE STATE	E00,003	N/A	¥"0:00°7 ≈	2.00.00 E	
	No. of the second	SEE THEORY	مستد سوري سرواري		7				CHART (10) B (O + O O) (1)
		none de la	ALC: NO.	10000000000000000000000000000000000000	EFTERS!		- versame 2.	Salating Same of the Salating	SUPPLY STATE OF THE
_	50.00					The second of th		er otto i en i do afesto i	KED TO THE TO
(\$0.89	\$3,052.94	\$621.15	\$55.80	\$676.95	\$242.03	\$53.67	67 710 05	C(470 : 5
						4545.03	\$ 53.67	\$7,210.85	\$6,172.48

11

PERFORMANCE-BASED INCOME

The reported performance-based income in the world increased by 7.7% to \$2.9 billion compared with 1997. Within the performance sector, the reported income from radio and television broadcasting remained the largest element, accounting for 56% of performance-based income.

Revenues from the use of music on television rose by 4.2%, while revenues from radio increased by 11.72%. Meanwhile, the global income from live performance and the public performance of recorded music increased by nearly 8.4% to \$1.26 billion, while on a flat exchange rate the sector also recorded an 8.2% increase to \$1.41 billion.

Spain and Belgium, which did not finish in the top ten in 1997, placed ninth and tenth, respectively, while 1997's ninth and tenth, Brazil and Canada, fell to twelfth and thirteenth, respectively.

Twelve of the leading twenty markets saw the music publishing industry derive greater income from public performance than from reproduction. These were, by rank, the U.S. (where performance income was 44% of the total). Italy (73%), Netherlands (50%), Belgium (51%), Switzerland (50%), Canada (46%), Argentina (64%), Sweden (46%), Denmark (51%), Finland (64%), Norway (58%) and Poland (64%). It is important to note that reproduction based income figures for Brazil, the sixteenth ranked country, were not available.

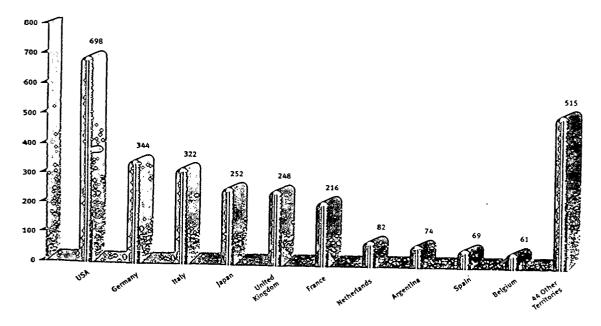
In some of the smaller territories, significant gains in performance income were also reported. Poland recorded a 39% increase over 1997 to \$20.7 million; Portugal rose by 40% to \$17.1 million; and Singapore rose 13% to \$3.2 million.

Other territories, however, saw decreases: Israel fell by 18% to \$11 million, while Uruguay dropped 8% to \$2.86 million.

▼ Continued on page 13

CHART 5 PERFORMANCE-BASED INCOME

(\$ MILLIONS)



Nevertheless, reproduction-based revenues increased by 6.9% over 1997. This was due largely to the fact that the largest sub-sector of reproduction-based income, phono-mechanicals, rose 6% to \$1.9 billion. Synchronization revenues increased by 8% to \$753.7 million following several years of double-digit growth.

Revenues from private copying increased by 22.9% in 1998 to \$78.9 million. Private copying accounted for 2.9% of reproduction-based income, compared with 2.5% in 1997. Synchronization accounted for 24% (for both 1998 and 1997) and phono-mechanical royalties 49% (compared with 70%).

There were no significant changes in the rates of phono-mechanical royalties paid across the world in 1998. In Continental Europe, the rate was 9.009 % of Published Price to Dealers (PPD), although this was subject to various discounts negotiated at the national level. In most of Latin America, the figure was between 8% and 8.5% of PPD. Several countries in Southeast Asia (including Japan, Hong Kong, South Korea and Singapore) use a percentage of retail-selling price (RSP), as do such countries as Egypt, Peru and the Republic of Croatia. Taiwan uses a combination of 5.4% of PPD and 6.25% of RSP. The United States and Canada are the only countries where the rate is calculated in cents per track

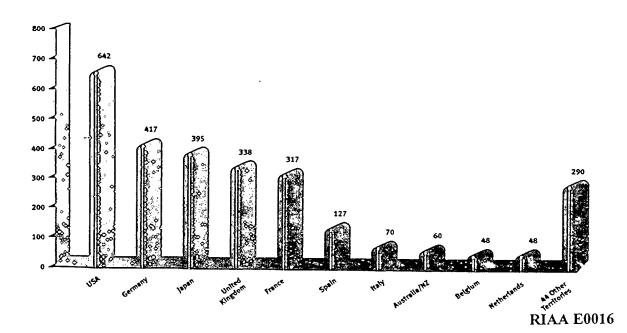
rather than as a percentage of the price; in the U.S. that rate increased from 6.95 cents per composition/1.3 cents per minute to 7.1 cents per composition/1.35 cents per minute in 1998.

The table giving details of the Mechanical Royalty Rates for the 1998 Survey Period is on page 15.

The leading ten countries for reproduction-based income remained essentially constant from 1997. Australia/New Zealand, which placed ninth in 1997, moved up to eighth in 1998, while Belgium, which had been tenth, moved up to ninth. The Netherlands, which finished 1997 in eighth place, fell to tenth.

CHART 6 REPRODUCTION-BASED INCOME

(\$ MILLIONS)



DISTRIBUTION-BASED INCOME

Sales of printed music and income from the rental and public lending of CDs and videocassettes increased by 5.4% in 1998 to \$662.6 million. The sector continues to account for about 10% of the world publishing market. Printed music sales worldwide rose 6.3 % in 1998 to \$617.33 million. The leading national markets for scores and songbooks remained the U.S. and Germany, which collectively at \$365.65 million account for over 59% of the income from this sector. However, the total given in the Master Survey table undoubtedly understates the size of the global printed music market because there is no central source of data for this sector in many countries.

The bulk of the industry's rental income is still derived from Japan, where there continues to be a large number of rental stores. In 1998, at \$35.57 million, Japan accounted for 78.6% of revenues from this sector. However, indications are that rental revenues from Japan, which decreased 1.5% in 1998, will continue to decline.

11 14

CHART B COMPARISION BY REGION

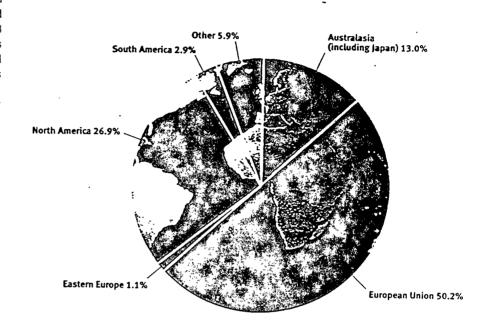


CHART 7 DISTRIBUTION-BASED INCOME

(\$ MILLIONS)

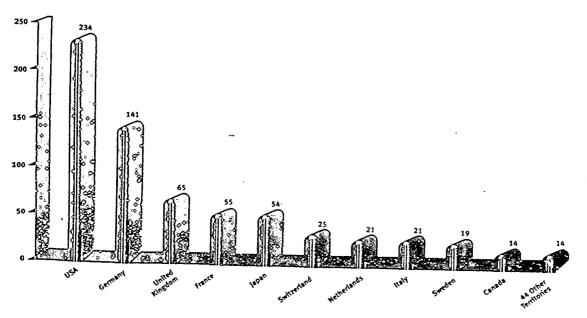


TABLE 2: DETERMINATION OF MECHANICAL ROYALTIES

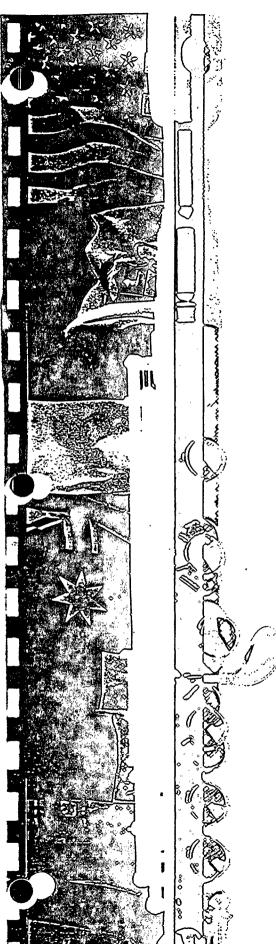
			Reported Phono-Mechanical
			Royalties
Country	ដet Royalty	Method of Determination	(\$ Millions)
Argentina C	8.19% of published price to dealer (ppd)	Collective bargaining	**19.68*** *********************************
Australia/N.Z.	9.009% of ppd	collective bargaining	42.95 ~
Austra 1991	9.009% of ppd	MEBIEM-IFPI SELECTION AND PROPERTY OF	న్ 10.23 కుర్యాన్స్ క్రా
Belgium	9.009% of ppd	BIEM-IFPI	24.36
Brazille Style Control	8.4% of ppd (on 90% of sales)	BIEM-FLAPF	IN/A THE SECOND
Bulgaria	10% of wholesale price	N/A	N/A
Buridna Faso	enaste estados	全N/A 2000年1200年1200年1200年1200年1200年1200年1200	20.02 ということをかせる
Canada	6.6 cents and 1.32 cents per minute	collective bargaining	42.13
Chile 3134 F237	78.29% of ppd (on 90% of sales)	BIEM-FLAPE SEE	0.63
China	3.5% of ppd	MCSC	0.02
Columbia 28 20 20 20 20 20 20 20 20 20 20 20 20 20		INATES TO THE STATE OF THE STAT	RN/A man Call Careful.
Czech Republic	9.009% of ppd	BIEM-IFPI	4.14
	19.009% of ppd (19.009%)		¥21.38 2 3.6 / 25.
Egypt	6.4% of retail selling price (rsp)	N/A	N/A
	9.009% of ppd		MALLE STATES
Finland	9.009% of ppd	BIEM-IFPI	8.55
			3.53 217.35 (\$ T.1.57 T)
Germany	9.009% of ppd	BIEM-IFPI	
	MANAGETER MENGENERAL MENGEL		226.07
Greece	9.009% of ppd	BIEM-IFPI	NATERIAL
			1.30
Hungary	9.009% of ppd	BIEM-IFPI	1034
			2.37
India المحادث والمحادثة المحادثة المحا	。 N/A	N/A	90712835
Indonesia	•		N/A
ireland	5.4% of ppd 8% of published dealer price	Regional MoU	
		MCPS (ireland)/IFPI (irlande)	N/A
italy	9.009% of ppd		, , , , , , , , , , , , , , , , , , , ,
,		BIEM-IFPI	56.28
gapang e gasa (a a a a a Lithuania	5.6% of rsp		
	9.009% of ppd	BIEM-IFPI	0.03
Netherlands	8% of ppd (cassettes); 6% of ppd (CD)		
	9.009% of ppd	BIEM-IFPI	33.60
Peru	19.009% of ppd (1971) 1971 1972 1973		14.25
-	5.25% of the rsp	BIEM-FLAPF	0.32
Poland	(\$4% of ppd]		
	9.009% of ppd	BIEM-IFPI	6.59
Republic of Croatia			10.63
•	7.4% of rsp	N/A	1.71
Russian Federation	9.009% of ppd		0.00 8 32 12 12
	N/A	N/A	0.07
Singapore			NA PARTICIPAR
• •	5% of rsp	set by statute	0.17
South Africa	all of ppd	EN/A 3-1-2-3-2-3-3-3-3-3-3-3-3-3-3-3-3-3-3-3-	014.28
	6.75% of ppd	collective bargaining	8.12
		Regional MoU, KOMCA	
Spain	9.009% of ppd	BIEM-IFPI	51.84
Switzerland	\$9.009% of ppd 1251777 \$2.5000 \$3.5000	BIEM-IFPI	26.97
	9.009% of ppd	collective bargaining	21.63
Lighten Turken	25.4% of ppd; 6.25% of rsp 7.12.7.7.7.7.7.7.7.7.7.7.7.7.7.7.7.7.7.7	Regional MoU; FA	0.19
iurkey	N/A	N/A	0.79
	L8.5% of pod	set by governmental regulations	286.08
Uruguay	8.44% of ppd	BIEM-FLAPF	1.15
USA 3555 OF 15 25 P.	47.1 cents and 1.35 cents per minute		530.14 TEXTERS
Zimbabwe	N/A	N/A	N/A

: 1

耳

Country	Сигтелсу	Exchange Date	In US\$
1. CArgentina	Argentine peso	# 6/30/98 TT	1.0005
2. Australia/N.Z.	Australian dollar	6/30/98	0.6155
P. 3. W Austria		12/31/98	0.0848
4. Belgium	Belgian franc	12/31/98	0.0289
K45. & Brazil		12/31/98	0.0289 (************************************
6. Bulgaria	Bulgarian lev	12/31/98	0.0000
7. Burkina Faso		Swaleston	
8. Canada	Canadian dollar	్లో 12/31/98 ్ ్లైవర్స్ స్ట్రా స్ట్రా 12/31/98	· 建0.0018 条字
9. Chile		· · · · ·	0.6507
10. China	Renminbi		(二)(E)(0.0021 (产手)
B11 % Columbia		12/31/98	0.1208
12. Czech Republic	Peso Czechoslovak koruna		0.0006
· · · · · · · · · · · · · · · · · · ·		12/31/98	0.0331
		ご12/31/98	1 To 1563
14. Egypt	Egyptian pound	12/31/98	0.2922
16. Finland	Estonian kroon Agegya, January Mary		差0.0750
	Finnish markka	12/31/98	0.1960
i. 17. : France	French franc	12/31/98	··· · · · · · · · · · · · · · · · · ·
18. Germany	Deutsche mark	12/31/98	0.5964
19. Ghana	Cedi	12/31/98	0.0004
20. Greece	U.S. dollar	12/31/98	0.0035
21. Hong Kong	Hong Kong dollar	12/31/98	0.1291
22. Hungary	Hungarian forint	12/31/98	0.0046
23. Žilceland	Icelandic krona	12/31/98	₫, 0,0144
24. India	Indian rupee	3/31/99	0.0236
25. 🛴 Indonesia	Indonesian rupiah	12/31/98	0.0001
26. Ireland	Punt	12/31/98	1.4799
27. Israel	Israeli new shekel	12/31/98	0.2401
28. Italy	Italian lira	12/31/98	0.0006
¹ 29. Japan	Japanese yen	3/31/99	0.0075
30. Lithuania	Lithuanian litas	12/31/98	0.2499
31. Mexico	Mexican peso 👙 🛣 💮 💮 💮	12/31/98	0.1010
32. Netherlands	Netherlands guilder	12/31/98	0.5292
Norway 1	Norwegian krone	/12/31/98 1 · 中央经营运行产品的	FE 0.1311 14 FF
34. Peru	Peru new sol	12/31/98	0.3167
	Philippine peso (1) 1825 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	12/31/98	0.0256
36. Poland	Polish zloty	12/31/98	0.2849
	Portuguese escudo		0.0058
38. Republic of Croatia	Euro	12/31/98	1.1669
39 Romania	Romanian leu	12/31/98	0.0001
40. Russian Federation	Ruble	12/31/98	
M1. Senegal	CFA franc	12/31/98	\$250.0018 \$ FEE
243 - Slovak Republic	Koruna 7	12/31/98	0.02713055
THE SOUTH FAIRE	South African fand	12/31/02	0.1701
545. South Korea	Korean won	(12/31/98 🗅 /#F@#S#\\$##\ - 78	0.0008
40. Spaill	Spanish posets	42/24/22	0.0070
LEAY TRADWeden	Swedish krona	12/31/98	220.1 229
40. SWILZEITANU	Swiss franc	12/31/98	0.7252
R49. Naiwan		12/31/98	\$\$ 0.0310 TO
50. Turkey	Turkish lira	12/31/98	0.0000
United Kingdom	Pound sterling	12/31/98	√ <u>&£1.</u> 6587
52. Uruguay	Uruguayan new peso	12/31/59	0.0917
EST SUDATE PARTY OF	U.S. dollar Way and the control of t	12/31/98 - COETE	23 E 0000 25 25 25 25 25 25 25 25 25 25 25 25 25
54. Zimbabwe		6/30/98	0.0554

RIAA E0019 16



As the global music industry found itself poised on the brink of a new millennium, there was a growing sense of cooperation among many nations, both within and without their respective regions. However, questions surrounding piracy, and adequate copyright protection on the Internet, continue to make themselves felt.

ASIA

The economic crisis that afflicted much of Asia in 1997-98 is still impacting several countries, while such upheavals as a coup d'etat in Pakistan and political unrest in Indonesia have also had a chilling effect.

According to figures compiled by the International Federation of the Phonographic Industry (IFPI), in 1998 music sales in Asia (excluding Japan) fell 30% in terms of dollar value and 10% in units. Only India showed mild growth of 2%.

In Japan, the world's second-largest music market behind the U.S., while dollar value grew by 4%, unit shipments were down by 2%.

The Japanese decrease continued for the first six months of 1999, which saw a 2% decrease in dollar value and an 8% fall in units shipped. For the rest of the continent during this same period, dollar value rose by 11% and units were up by 5%, with Korea, Thailand and Malaysia in particular showing encouraging signs of a rebound.

Piracy remains the biggest problem facing the Asian music industry. It has been especially explosive in Taiwan (where piracy accounts for some 30% of the market) and Hong Kong.

IFPI executives are lobbying for a legal amendment to include piracy in Hong Kong's Organized and Serious Crime Ordinance. According to the organization, Hong Kong has eighty-four optical-disc manufacturing plants, with total annual production capacity of over 2 billion pieces, compared with legitimate demand of 300 million discs. The territory's piracy rate is currently about 50%, and according to IFPI, illicit CDs emanating from Hong Kong can now be found as far away as Latin America.

Excluding Japan, Asia has a collective optical-disc manufacturing capacity of 4 billion discs, with more than 3 billion of those being produced in Greater China (Hong Kong, Macau, Taiwan), per IFPI. Factories are also being opened in such heretofore uncharted territories as Vietnam and Myanmar.

Lachlan Rutherford, president of Warner Music Asia-Pacific, was named chairman of IFPI's Aisia-Pacific regional board at the group's November 3, 1999 board meeting in Hong Kong. He has declared that one of his priorities is to aid local IFPI bodies in actively persuading their governments to join the anti-piracy fight.

A potentially explosive piracy scandal rocked Thailand in November 1999, with the arrest and indictment of a Malaysian businessman who has a personal relationship with Thai Prime Minister Chuan Leekpai. The businessman was arrested after guards found eighty allegedly illegal Video CDs — a popular configuration in Asia — in his van during a visit with Chuan.

A long awaited new Memorandum of Understanding (MOU) was finalized in June 1999 and applies retroactively to January 1, 1999. Approved by top executives from the big five multinational record and music publishing companies and The Fox Agency International, Inc. (FAI), the MOU sets the ground rules for the manufacture and distribution of recorded music in thirteen Asian markets.

The new MOU establishes a royalty rate of 6% of the record companies' published price to dealer (PPD) with a series of discounts to apply in various MOU territories. A discount of 10% from the MOU rate, resulting in an effective rate of 5.4% of PPD, will apply in Malaysia, Singapore, South Korea and Taiwan, with further discounts conceded in such less developed markets as Indonesia, the Philippines and Thailand. Those discounts are subject to further adjustment when industry sales reach and exceed previous levels of performance.

Meanwhile, "starter rates" of 3% of PPD were adopted for the new MOU territories of Brunei, Cambodia, Laos, Macau, Myanmar and Vietnam. Hong Kong was again excluded from the MOU due to local industry negotiations that were simultaneously taking place.

The MOU also establishes rates (generally 2.7% to 4.8% of PPD, depending on the territory) for certain defined audio-visual categories, primarily to accommodate various karaoke formats. Digital Phonorecord Deliveries and other Internet-based means of

reproduction and distribution are excluded from the MOU, as are multimedia and other interactive formats.

Under terms of the agreement, record labels are required to provide label copy information to the licensers on a monthly basis and suspense lists of unidentified compositions on a semi-annual basis along with each accounting. Royalties are to be remitted within sixty days of each semi-annual accounting period.

Unlike the previous MOU, which stated only that the licensers reserved the right to audit, the new agreement: details the nature and extent of documents reasonably required for production in the course of a competent royalty inspection; states that audits may be conducted individually or collectively by the licensers; and requires the record labels to contribute to the audit costs, depending upon the level of under-reported payments determined in the course of the examination. (FAI informed three record companies that it was exercising its audit rights under the previous MOU clause, when it became obvious that the new MOU negotiations would not be concluded by year's end 1998. Those audits, covering South Korea and Taiwan, are ongoing.)

All relevant parties have committed under the agreement to establish a standardized electronic system throughout the region to ensure timely and accurate reporting.

Semi-annual meetings of the MOU signatories to discuss further issues, including establishing a formal mechanism to deal with piracy, are also set forth in the new accord.

The new agreement replaces the first MOU, originally signed in 1994 by the (then six) multinational labels and their affiliated music publishers. Vagueness and generalities within that MOU prevented consistent agreement and enforcement, however.

Meanwhile, there are other signs that the region is continuing to consolidate, with several economic initiatives being signed between China and Malaysia. In addition, South Korea's Ministry of Culture and Tourism has announced it will allow some Japanese acts to play live in the country - the first time it has done so since a ban on Japanese pop culture was instituted following Japan's colonization of Korea from 1910-45. The ministry said live concerts by Japanese artists in venues with seating capacities of less than 2,000 would be allowed, but that a ban on the broadcast and sale of Japanese music would continue.

On November 15, China and the U.S. finalized an agreement on the terms of China's accession to the World Trade Organization. The agreement removes certain restrictions on the ability of U.S. record companies to do business in China, and encourages the development of Sino-U.S. partnerships in the production and distribution of recorded music. Until China becomes a larger legitimate market, however, Taiwan is expected to remain one of the region's main commercial and creative centers.

In Australia, negotiations continue over setting a new mechanical royalty rate. The existing rate, based on a published price to dealer (PPD) rate of 9.306%, and instituted in 1994, has been decried as too high by the Australian Record Industry Association (ARIA). That group would prefer that the new rate be within the 2.7% to 6.75% PPD found throughout Asia.

The Australian Performing Rights Association (APRA), however, holds that the rate should be similar to that in the U.K. and other European territories. APRA prefers to retain the 9.306% rate and allow for an increased percentage for digital downloading.

Although the 1994 rate expired on December 31, 1999, it will remain in effect on an interim basis pending a Copyright Tribunal hearing.

EUROPE

The European Union music market grew overall by 3% in value and 2% in units in 1998, but there was a marked diversity for individual countries, according to IFPI.

Of the largest markets, the U.K. was the strongest with a 4% increase in dollar value and unit shipments, while France rose by 4% in value and 2% in units, with Spain up by 16% in value and 10% in units. Germany, however, decreased by 1% in value and 2% in units. In Eastern Europe, results were also mixed, with a 13% value increase in Poland and a 17% value decrease in Russia.

Varied results continued for the first half of 1999, when the E.U. overall posted a 3% loss in dollar value and a 5% loss in units, due mostly to Germany's decline of 4% in value and 10% in units, a decline in the Netherlands of 2% in value and 8% in units, and in the U.K. of 1% in value and 6% in units. Eastern Europe as a whole also declined, by 3% in value and 10% in units. France continued to grow, however, by 1% in value and 5% in units.

IFPI is increasing its efforts to fight piracy in the Ukraine, which it says has replaced Bulgaria as the primary source of pirated product in Europe. The Federation plans to establish an office in Kiev to help the Ukraine government battle the problem. According to IFPI estimates the Ukraine currently has an annual production of 70 million optical discs - more than twice the level of estimated legitimate demand in central and eastern Europe. Piracy of international repertoire in the Ukraine is estimated at 95% of all recordings.

Meanwhile, the European Commission is continuing to work on its Copyright Directive, which will amend European law to include protection for digital distribution rights. The music industry is hopeful that the commission will ultimately reintroduce amendments into the Directive that have been removed. and which relate to "temporary" copying of files across a computer network. If not amended, the directive could legalize unpaid copying of music files on the Internet.

Implementation of the Cannes Accord (signed in 1997) is also continuing. The Accord provides for a progressive reduction of the continental European societies' commission rates from an average of 8.09% to a weighted average of 6% by July 1, 2000. From January 1, 1999 to June 30, 2000 the commission rate will be an average of 6.27%; from July 1, 2000 to June 30, 2001 the rate will be 6%.

A central tenet of the Cannes Accord is the elimination of disparities between the societies regarding commission rates. In addition, the European societies agreed to give publishers and authors twice yearly advances, starting on January 1, 1998 and continuing throughout the four-year term of the agreement. The advances are set at between 25% and 40% of the money the publishers and authors received in the previous six-month period.

THE UNITED STATES

The U.S. experienced its strongest growth in four years in 1998, with a rise of 11% in dollar value and 7% in units, according to IFPI. The good news continued in 1999, according to the Recording Industry Association of America (RIAA), which reported a 3.2% net increase in audio and video shipments (from 1.12 billion units in 1998 to 1.16 billion units in 1999), and a corresponding increase in dollar value of 6.3% from \$13.7 billion to \$14.6 billion.

The Digital Millennium Copyright Act (DMCA) was passed Oct. 28, 1998, and requires Internet broadcasters and record labels to provide a licensing system for Webcasters who want to play copyright-protected music on the Net. The DMCA gave online broadcasters one year to file (with the U.S. Copyright Office) a statement of official intent to obtain a statutory license to broadcast digital audio signals.

But the Oct. 15, 1999 deadline passed with no distinct sign of agreement on the terms of the proposed license or its rate from Internet radio concerns or the Recording Industry Association of America (RIAA), which represents most labels in these discussions.

Still unclear is whether traditional terrestrial broadcasters who simulcast their signals online are also subject to the new digital performance right. Terrestrial analog broadcasters are not required to pay a performance royalty.

The largest radio group merger in history was announced October 4, 1999, when Clear Channel Communications and AMFM said they would merge in a deal valued at \$56 billion. The new company, which will retain the Clear Channel name, will feature 830 staThe merger — the latest in a series of such deals since Congress de-consolidated the radio industry with the 1996 Telecommunications Act — has resulted in some concerns over competition and having such a large media group control a large portion of the radio market.

Clear Channel will also control two radio networks (Premiere and AMFM

Radio Networks) as well as interests in more than 240 international stations in thirty-two countries. All told, the company is predicted to have annual revenue in 2000 of \$5 billion.

Latin music exploded into American consciousness in 1999, led by Ricky Martin, Jennifer Lopez, Marc Anthony and Enrique Iglesias. According to the RIAA, a total of 25.56 million units were shipped (at a dollar value of \$291.6 million) for the first half of 1999

— an increase of 12% and 11%, respectively.

In addition, the Latin Academy of Recording Arts & Sciences (LARAS), a branch of the National Academy of Recording Arts & Sciences (NARAS), announced that its first-ever Latin Grammy Awards will be held in September 2000.

LATIN AMERICA

The Latin region is still struggling to overcome the economic crisis that afflicted it for much of 1997-98. According to IFPI, the region as a whole fell in 1998 for the first time in several years, by 9% in dollar value and 5% in units. This was due largely to a decrease in the Brazilian market of 14% in dollar value and 10% in units. The region's other major markets, Mexico and Argentina, both experienced growth, of 5% and 2% in volume, respectively.

Unfortunately, the news in Latin America was not much better for the first half of 1999, when the region overall lost 17% in dollar value and 16% in units. Brazil again led the way, with a drop-off of 41% in value and 31% in units. Meanwhile, Mexico was up by 13% in value and 4% in units, while Argentina rose by 2% in value and 4% in units.

However, piracy remains rampant in the region. Since July 1998, 20 million pirate CDs have been seized heading into Latin America from Asia. To help address the problem IFPI announced it would integrate the Latin American trade group Federacion Latino-americana de Productores de Fonogramas y Videogramas (FLAPF), which was renamed IFPI Latin America, effective Jan. 1, 2000.

The integration joins six FLAPF national groups, in Argentina (CAPIF), Brazil (ABPD), Colombia (ASINCOL), Chile (APFC), Mexico (AMPROFON) and Venezuela (APROFON), to IFPI, raising IFPI's total number of member groups to forty-six. The new merger should signal a renewed and stronger commitment to antipiracy activities in the region.

Citing poor feedback from the 1999 edition of its show in Miami, the Parisbased Reed Midem Organization said it would postpone the next Midem Americas trade fair for at least one year. Since its inception in 1997, the Latin-themed event has been dogged by political squabbles over whether to allow Cuban musicians to play Miami. A decision on future editions of the trade fair is expected later in 2000.

Meanwhile, the Spanish music industry inaugurated its Todomusica event in Seville in September 1999 to attract Mediterranean and North African

companies as well as Latin markets in Latin America and the U.S.

Internet commerce research firm Jupiter Communications projects that more than 9 million online users in Latin America logged on by the end of 1999, and predicts the number will increase to 38 million in 2003. This projected increase of nearly 50% annually marks Latin America as the region with the highest expected growth rate internationally, exceeding that of the U.S., Europe, and Asia.

Jupiter believes that the majority of the 9 million online users within the region will be concentrated in Brazil, Mexico, and Argentina. However, it adds, penetration within the region will likely remain low, reaching a projected 6.8% of the population in 2003.

FLADEM, the Federation of Latin American Music Publishers (Federacion Latinoamericana de Editores de Musica), was founded in 1992 to serve the needs of music publishers and songwriters of Latin repertoire. FLADEM represents a substantial number of music publishers and music publishers' associations in

▼ Continued on page 21

North, Central and South America, the Caribbean islands and Spain.

As an integral member of FLADEM, NMPA is represented on its Executive Council and provides the organization with valued financial support annually.

Mexican music publishers' association EMMAC, with FLADEM's support, has been successful in reaching the basis

for an agreement intended to bring definite resolution to the longstanding dispute between Mexican music publishers and local collection society SACM. At issue was SACM's claim that it has the right to collect and distribute all royalties from publishers.

In Colombia, following the execution of an agreement between the music publishers' association, ACODEM,

and the authors' society, SAYCO, FLADEM signed an agreement of cooperation with ACODEM, under which FLADEM will play an active role in normalizing and developing copyright protection and collection in Colombia, representing the international music publishing community.

NEW TECHNOLOGY

Two formats for high-density discs are in development: DVD audio and the Super Audio CD.

Digital versatile disc, better known as DVD, is an optical disc format for video, computer ROM, audio and multimedia. DVDs are the same size as CDs, but can have up to four layers of information, each layer with about seven times the capacity of a typical music CD.

DVD Video is already exploding in several territories around the world. DVD Audio discs promise vastly improved sound quality, with the extra capacity in the disc used to achieve a very high quality, multi-channel surround sound, graphics and video.

Sony/Philips are separately developing a high-density disc format called "Super Audio CD" (SACD) based on their proprietary technology. The SACD is similar to the DVD but offers a different sound system, again, of very high quality. These discs will also have about seven times the capacity of the CD and multi-channel surround sound. They may also include such features as text, graphics, video and interactivity. SACD audio discs will require new players, but most, if not all, new SACD players will be able to play consumers' existing CD collections.

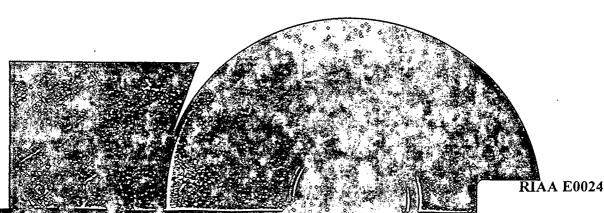
The RIAA has called on the hardware manufacturers in the DVD area and Sony/Philips to agree on a single standard for the high-density digital audio disc. At issue is whether every high-density disc will be compatible with every type of high-density player, as well as whether the necessary copyright protection will be provided.

Several important issues continue to swirl around the MP3 format. MP3 is a sound-

file digital format allowing for the easy conversion and online distribution of music, compressing data to one-twelfth of its original size while offering the listener the high quality sound of a compact disc. The concern over MP3 is that it is not a secure technology - whatever is copied in MP3 can be re-copied and distributed. Many MP3 song files are posted on the Internet without copyright owner consent, and are offered for free download.

The music industry is prepared to embrace MP3 technology, but only if safeguards are in place to reduce the threat of piracy. As a result, the MP3 player explosion that was predicted for Christmas 1999 did not happen.

Other digitally compressed technologies are also now being explored, which may ultimately render MP3 obsolete.



PIRACY

S

On October 28, 1999, IFPI announced a coordinated global strategy against music piracy, whereby recording companies and associations worldwide will work together to ensure that music piracy cannot escape detection by crossing national borders.

The organization estimated the global pirate music market at over 2 billion units, worth an estimated \$4.5 billion, in 1998. Sales of pirate music CDs rose to 400 million units, up nearly 20% from the previous year. 1998 also saw rapid growth in cross-border and transcontinental pirate trade, with increasing evidence of the involvement of organized crime.

Total unit sales of pirate recordings, including cassettes, were estimated by IFPI to have grown by 3% in 1998. Recorded seizures of all optical discs by IFPI totaled at least 60 million units, a significant increase from 1997. On a regional basis, Southeast Asia saw the most evidence of rising illegal optical disc production.

Fortunately, IFPI also reported increased antipiracy cooperation in 1998 between allied copyright industries such as the audio-visual and software sectors. Though nearly three quarters of pirate optical disc manufacturing in 1998 was of non-audio discs, IFPI cautioned that with the convergence of formats on to one optical disc, an explosion in future music piracy is distinctly possible.

In the United States, the RIAA's mid-1999 figures revealed that the association's anti-piracy programs had resulted in diminished cassette and CD seizures and that fewer large websites were offering unauthorized songs for Internet download.

It cautioned, however, that music piracy continues to shift from CDs to CD-Recordables and the Internet. Indeed, the

RIAA figures showed that CD-Rs are growing in the U.S., with seized product totaling 155,496, up from 23,858 last year. The group announced a CDReward Program, offering \$10,000 to any person providing information regarding illegal CD-R manufacturing locations.

Given that CD-Rs are already being seen as significant piracy threats in several territories around the world, the U.S. industry has been vigilant in trying to crack down on CD-R piracy. As part of the music industry's efforts, online auctioneer eBay banned the sale of CD-R items, effective October 17, 1999.

The RIAA also announced a \$13.7 million award in its case against Global Arts Productions and Danny Jordan the largest judgment ever in RIAA history. Jordan and his company Global Arts Productions were found to be selling fraudulent music licenses and recordings of popular back catalog artists to foreign companies.

PIRACY - SPECIAL 301 REVIEW

In February 2000, the International Intellectual Property Alliance (IIPA) filed its annual "Special 301" review of global copyright piracy and market access problems with the U.S. Trade Representative. While discussing fifty-five countries, the report urged USTR to designate Israel and Ukraine as "priority foreign countries."

Special 301 is a provision of U.S. trade law requiring the USTR to identify countries that deny adequate protection of intellectual property with respect to standards and enforcement. Within thirty days of designating a priority foreign country, the USTR may launch an investigation of the policies and practices of a country. Such an investigation can ultimately lead to trade sanctions against that country.

Israel has been targeted due to its immense piracy problem. That problem has resulted in a sales decline of some 50%, as well as major reductions in investment in the creation of new recordings.

The IIPA, joined by the Recording Industry Association of America (RIAA), maintain that Israel persists in being a key zone for optical media piracy, producing, importing and transshipping pirate product in quantities dwarfing its modest legitimate domestic demand. In addition, Israel's copyright law amendments, passed in December 1999, do not fully satisfy TRIPS compliance, as was intended.

The Ukraine, which produced and exported an estimated 30 million pirate CDs last year, cost the music industry some \$210 million. The nation's estimated production capacity stands at about 70 million units per year, far greater than its legitimate demand for optical media products.

The IIPA and RIAA consider Ukraine to be its region's number one pirate CD producing country, surpassing every other country in Central and Eastern Europe.

Other countries continuing to be heavily monitored include Poland, the Czech Republic, Taiwan, China, Paraguay, Brazil, Russia and Australia. On the positive side, advances in both the legal and enforcement areas in Mexico and Hong Kong have resulted in the removal of these long-time offenders from the Special 301 list.

The IIPA is a coalition of seven trade associations representing U.S. copyright-based industries in bilateral and multilateral efforts to open up foreign markets closed by piracy and other market access barriers. According to Copyright Industries in the U.S. Economy: The 1999 Report, prepared for IIPA by Economists, Inc., the core copyright industries accounted for \$348.4 billion in value added to the U.S. economy, or about 4.3% of the Gross Domestic Product in 1997.

i As the seventh-largest recorded music market in the world, and as a nation with two official languages, Canada has long been a domestic powerhouse as well as a valuable source of international repertoire for English- and French-speaking markets. Nonetheless, record sales have remained mostly flat for the past few years, though indications are that 2000 could see renewed growth.

Total music unit sales for 1999 were down 2% to 67.3 million units, according to the Canadian Recording Industry Association (CRIA). Retail value of sales remained virtually unchanged from the previous year at C\$761 million (\$527 million).

As reported by the Society of Composers, Authors and Music Publishers of Canada (SOCAN), total income was down 2% to C\$112.82 million (\$75.71 million) in 1998. Much of the blame for that decline lay with a delay in payments from Canadian cable companies and pay-per-view channels.

However, the soaring international success of such artists as Celine Dion, Shania Twain and Bryan Adams led to an increase in royalties from international societies of 14% to C\$22.97 million.

Those gains were soon lost, though, when for the first quarter of 1999 total shipments dropped by 14%. Fortunately, strong sales by such international acts as Ricky Martin, Mariah Carey and Backstreet Boys appeared to have the industry back on track heading into the Christmas 1999 season.

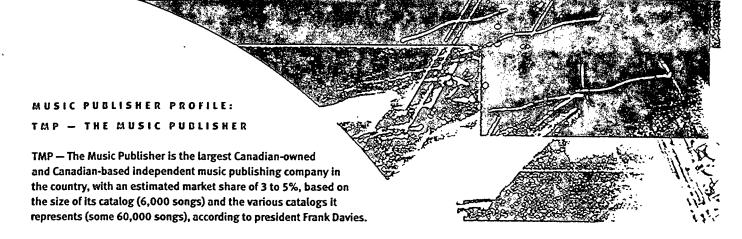
As is the case in many territories, piracy remains an important issue. CRIA estimates that piracy costs the industry some C\$30 million (\$20.1 million) a year, adding that it sends over two-dozen cease-and-desist letters a week to the operators of illegal MP3 websites.

s-Still, according to the International Federation of the Phonographic Industry (IFPI), piracy has remained at the 2%-3% level for much of the 1990s, making Canada's piracy rate one of the lowest in the world.

In order to facilitate legitimate downloading, the Canadian Musical Reproduction Rights Agency (CMRRA) is hoping to initiate a website-licensing plan soon, with current plans for an announcement sometime in 2000.

Also expected soon is a decision on the introduction of a blank recording media levy. The levy is aimed primarily at the growing threat of CD-R machines.

Unfortunately, SOCAN lost an appeal of a 1998 Copyright Board decision ruling that television broadcasters' annual payments for music be reduced from 2.1% of gross advertising revenues to 1.8% for the period 1994 to 1997.



Davies founded the company in 1986 after fifteen years spent in the publishing and record-producing business, culminating in heading the Canadian branch of English publishing firm ATV Music, which controlled the Beatles catalog, for five years. Following Michael Jackson's purchase of ATV and the subsequent shuttering of most of ATV's offices, Davies poured his assets into starting TMP.

In 1994 he sold TMP to Alliance/Atlantis Communications, Canada's largest film production company. A new umbrella corporation, Song Corp., bought TMP and Canada's oldest independent record group, the Attic Music Group, for \$15 million on August 6, 1999. Davies has remained a constant at the company throughout.

Song Corp. is headed by CEO Allan Gregg and vice-CEO Jake Gold. TMP has been assigned all the publishing catalogs previously owned by the companies now owned by Song Corp., including those of Gold's The Management Trust Ltd., whose roster includes rock acts The Tragically Hip, Big Wreck and the Watchmen.

In addition, TMP represents such international catalogs as Windswept (which, although purchased by EMI in 1999, will continue to be represented by TMP in Canada through 2000 under a pre-existing agreement); Jonico (including songs written by Joe Raposo for the "Sesame Street" series); RockSmith (the Everly Brothers and the number-one gospel song in North America, "Majesty") and Australian company Circle Music Publishing.

Other copyrights include "Oh What a Feeling" by Crowbar, "Corinna Corinna" by The King Biscuit Boy and compositions by Canadian acts Tom Cochrane and Klaatu.

TMP also holds the Canadian rights to the Spice Girls, who in effect jump-started the current wave of teen-oriented pop music. "They represented the return of pure pop, which from a publishing point of view was very good news," Davies says. "As was the case when country went through the roof in the early 90s, it represented a return of the song."

Since the Song Corp. acquisition, TMP has been busy amalgamating and integrating the other companies, including Attic and the newly-launched Oasis Entertainment Inc. distribution company. The companies should be sharing physical office space sometime in 2000; they are currently looking at buildings and property to accommodate a total of seventy-two employees — about forty-eight in the main Toronto office and the remainder in a distribution center and warehouse, also to be located in Toronto.

Pop and rock remain the leading genres in Canada, with urban music, hip-hop and rap making real gains. As has been the case in the United States, country music's share of the market has dipped of late, with a smaller handful of acts getting the lion's share of airplay, though Davies remains confident that the trend will eventually reverse itself.

Celtic-influenced music, both in the traditional Irish sense and in more mainstream pop and rock areas, has also been big for the past five to ten years, represented by such acts as Great Big Sea, the Rankins, Loreena McKennitt and TMP's own Ron Hynes.

The biggest issue facing the Canadian publishing industry in Davies' opinion is music on the Internet.

"That is the hottest topic in this country, as it seems to be everywhere else," he says. "We are very positive on the way it will ultimately go — we see it as a great opportunity, offering some fantastic marketing and promotional possibilities. We don't see it, as some do, as a 'death knell' for rights — some way will be found for these copyrights to be properly protected."

In addition to his TMP duties, Davies is on the boards of both the Society of Composers, Authors and Music Publishers of Canada (SOCAN) and the Canadian Musical Reproduction Rights Agency (CMRRA), and serves on the executive committee of the Canadian Music Publishers' Association (CMPA).

At the same time, the Copyright Board introduced a "modified blanket license," allowing television producers to negotiate directly with composers.

Expectations in the publishing industry are that revenues will significantly rise in 2000, when the mechanical royalty rate rises from C7.1 cents (4.7 cents) to C7.4 cents (4.9 cents). Though still relatively low by international standards, the new rate signifies a major improvement over a statutory two-cent mechanical rate that existed until 1987, when revisions to the Copyright Act allowed for the rate to be negotiated between publishers and the major record labels.

The Canadian government has not yet enacted legislation to implement its obligations under the World Intellectual Property Organisation (WIPO) Copyright Treaty and Performances and Phonograms Treaty. When ratified by thirty countries, the WIPO Treaties will establish binding international rules that will clarify and strengthen protection for copyrighted works in digital form.

The Copyright Board of Canada has not yet held any hearings on the ratification, despite hope that such action would occur following the Phase II revisions made to the Canadian Copyright Act.

According to SoundScan, for the first six months of 1999 Universal was the market-share leader at 27.5%, followed by Sony (17.2%), Warner (16.1%), EMI (13.1%) and BMG (13.0%). The remaining 13.1% is made up of such independents as Solitudes, which specializes in New Age music, and Marquis Classics, which focuses on classical music.

RETAILING

Canada's largest retailer is HMV, whose ninety-seven outlets accounted for about 20% of all Canadian music sales in 1998. The largest domestic chain is Sam The Record Man, whose presence was recently reduced after restructuring.

Department stores account for about 10% of music sales, with some hardware and grocery stores also carrying selected titles. Chain stores Chapters and Indigo, which focus primarily on books but also offer music, have also been expanding.

Online retailing is fast becoming a major presence in the market. CD Plus, one of the country's smaller chains, was the first to go online in early 1999 and has been followed by HMV, Sam The Record Man, A&B Sounds, Chapters and Indigo.

The Retail Music Association of Canada (RMAC) and CRIA have lobbied for the introduction of Sensormatic Electronics' acoustomagnetic theft-prevention tags to CDs at the manufacturing level. Initially set to begin in summer 1999, the plan has now been delayed to spring 2000.

As part of an initiative to drive more consumers to stores, CRIA and RMAC have also combined forces to introduce a joint promotion, New Release Tuesdays, publicizing the fact that most new albums arrive in stores on Tuesdays. The two organizations hope to involve one of the nation's burgeoning video channels in the program.

RADIO

Canada maintains an airplay quota law regarding radio. In fact, the quota of Canadian content that must be played on radio stations increased from 30% to 35% in 1999. Radio stations had argued against the increase, as well as against the issue of neighboring rights, whereby performers and producers receive royalty payments for the use of their recordings for public performances.

As a result, radio stations will now pay C\$100 (\$67.11) on their first C\$1.25 million (\$838,926) in advertising rev-

enues. Once they have exceeded that figure, the stations must pay 1.44% of any further ad revenues.

Changes in the Canadian Radio-Television and Telecommunications Commission (CRTC) regulations have allowed contemporary hit FM radio stations to play more hit songs than before, while ownership rules have been revised to allow one company to operate more than two stations in large markets.

REPERTOIRE

As has been the case in many countries, teen-oriented pop music has been dominating the Canadian marketplace. Zomba, which releases titles by Backstreet Boys and N'Sync, has responded to demand for its product by opening its first-ever Canadian office on July 1, 1999. Meanwhile, Britney Spears' "Baby One More Time" album was the nation's best seller throughout the first half of 1999.

Latin music from the likes of Ricky Martin and Jennifer Lopez has also been a success, while country music has been declining. Nominal Canadian country acts such as Shania Twain and the Dixie Chicks have crossed over to pop success, with radio stations playing more traditional country music finding decreases in listenership.

The urban, hip-hop and rap genres have also been making themselves felt on the Canadian music scene over the past couple of years. As more radio crosses over to play those artists, the pop/rock/CHR (contemporary hits radio) acts are in turn being more influenced by rap and hip hop.

The international breakout successes of Twain, Dion, Sarah McLachlan and Alanis Morissette — all allied with one of the five major multinational record companies — is more difficult to achieve for independent acts. Mainstream radio rarely plays such acts,

RIAA E0028

CANADIAN SOCIETIES

and FACTOR MusicAction Canada, a funding agency for independent artists, will see a reduction of 50% in its federal government financing in 2000, to C\$4.2 million (\$2.81 million).

į

One potential bright spot for independents is Song Corp., an umbrella organization which has acquired TMP — The Music Publisher and the Attic Music Group, as well as launching the Oasis Entertainment Inc. distribution company.

Headed by CEO Allan Gregg and vice-CEO Jake Gold, Oasis has budgeted C\$16 million (\$10.74 million) for its first year. Oasis is now Canada's only independent distributor with full-time sales and promotion staff across the country, many of whom came aboard after losing their jobs in the Universal-Polygram merger.

Artist development remains a tricky proposition in Canada. Does one concentrate on breaking an artist in Canada and then crossing him or her over to other territories - as was successfully done with Sarah McLachlan — or does one concentrate solely on the U.S. and expect success to ricochet back to Canada, as happened with Alanis Morissette, whose solid-if-not spectacular teen pop career in Canada has been massively overshadowed by her alternative rock reinvention in Los Angeles?

Obviously there is no set formula, but the dangers of walking such a tightrope can be formidable.

M

CANADIAN MUSIC PUBLISHERS' ASSOCIATION (CMPA)

OFFICERS:

Executive Director:
David A. Basskin

Founded in 1949, CMPA is a trade association composed of all the multinational, as well as many of the independent, music publishers in Canada. Membership is divided into two categories: active membership and associate membership, intended for those whose music publishing activity is infrequent.

CMPA's ten-member Executive Committee is elected annually by all the association's members, with all votes receiving equal weight.

For most of the past twenty years, CMPA's activities have been limited largely to lobbying the Canadian government for improvements to copyright legislation. These efforts have resulted in the "Phase I" package of amendments to the Copyright Act of 1988 and "Phase II" in 1997.

The Phase I package eliminated the sixty-four-year-old two-cent statutory mechanical license, allowing for direct negotiation of the rates, terms and conditions of mechanical licensing between CMRRA and the record industry. The Phase II package included the creation of a levy on the sale of blank recording media, which will start to generate income for music publishers, authors, performers and record producers this year.

Presently the CMPA is working to encourage the government to pass legislation implementing the 1996 WIPO treaties, which Canada signed in 1997. CMPA is also closely involved in other policy areas affecting publishers, including trade law, electronic commerce and broadcasting regulation.

CMPA's Executive Committee has also formed a subcommittee to focus on the development of conferences, training programs and better communications between the association, its members

and prospective members, government, industry and the public at large.

CMPA

1250 Bay Street, Suite 400 Toronto, ON MSR 2B1 Tel: 416-967-7272 Fax: 416-967-9415

CANADIAN MUSICAL
REPRODUCTION RIGHTS AGENCY
LTD. (CMRRA)

Officers:

PRESIDENT:

David A. Basskin

VICE PRESIDENT:

Fred Merritt

The Canadian Musical Reproduction Rights Agency Ltd. (CMRRA) is a nonprofit music licensing agency representing the vast majority of music copyright owners in Canada.

Founded in 1975 by a group of Canadian music publishers, the CMRRA was involved with the fight to eliminate the sixty-four-year-old compulsory license from Canada's copyright laws in 1988, and has since negotiated with the record industry to strengthen its publishers' rights and greatly increase mechanical and synchronization licensing revenue.

CMRRA is funded by commission on the proceeds of its licensing. Membership is open to any music publisher or copyright owner with respect to the Canadian use of the reproduction right in its music.

CMRRA is a subsidiary of CMPA, and the shares in CMRRA are held in trust for the members of CMPA by a trustee. CMRRA's Board of Directors is elected every two years by CMPA members, with active CMPA members' votes receiving four times the weight of associate members' votes.

CMRRA's address, telephone and fax are the same as that of the CMPA. The organization's website is www.cmra.ca.

INTERNATIONAL SURVEY | NINTH EDITION

COUNTRY PROFILE: CANADA

CANADIAN SOCIETIES (continued)

SOCIETE CANADIENNE DES AUTEURS. COMPOSITEURS ET EDITEURS DE MUSIQUE (SOCAH)

OFFICERS.

GENERAL MANAGER:

Michael Rock

GENERAL COUNSEL:

Paul Spurgeon

SOCAN is the sole performing rights society in Canada. Its role is to license the users of music in return for copyright fees, which it then distributes as royalties to SOCAN members in Canada and the thousands of foreign music copyright owners whose works SOCAN also licenses.

SOCAN was formed in 1990 when the two previous Canadian performing rights societies - Composers, Authors and Publishers Association of Canada (CAPAC) and the Performing Rights Organization of Canada (PROCAN) merged their operations to form a single entity.

The society is governed by a board whose eighteen members - nine composers/lyricists/songwriters and nine music publishers - are elected every two years.

Prior to 1990 both CAPAC and PROCAN had separate offices in Vancouver and Montreal. These were merged into new SOCAN locations in 1990. Offices are also located in Edmonton, Alberta, and Dartmouth, Nova Scotia, In March 1991, the Toronto staff moved into the new Head Office in Don Mills, Ontario.

SOCAN sponsors annual awards presentations for Englishand French-language Canadian composers, lyricists, songwriters and music publishers, and also offers seminars and workshops across the country.

Each year SOCAN sponsors the Gordon F. Henderson/SOCAN Copyright Competition, designed to encourage Canadian law students to study copyright law as it affects music, both in a national and international context. The society also sponsors competitions for both experienced and young composers.

SOCAN publishes a monthly magazine, Words & Music/Paroles & Musique.

SOCAN

41 Valleybrook Drive Don Mills, ON M3B 2S6 Tel: 416-445-8700 Fax: 416-445-7108 Website: www.socan.ca

SOCIETE DU DROIT DE REPRODUCTION DES AUTEURS, COMPOSITEURS ET EDITEURS AU CANADA (SODRAC)

Officers:

GENERAL MANAGER.

Claudette Fortier

SODRAC negotiates collective and individual reproduction agreements with such users as producers of sound and video recordings, radio and television broadcasters, and educational institutions, and soon plans to do the same with blank audio tape manufacturers.

In its collective agreements, SODRAC grants a blanket license to users, in return for a lump-sum payment it then redistributes to its members. In its individual agreements, which are mainly for the reproduction of pre-existing works in audiovisual productions, SODRAC consults the rights' holders to ensure that their moral right is respected.

SODRAC was founded in 1985 by SPACQ (Société professionnelle des auteurs et des compositeurs du Québec), PRO-CAN (Performing Rights Organization of Canada Ltd.) and the French collection society SACEM (Société des auteurs, compositeurs et éditeurs de musique).

Since PROCAN's withdrawal in 1989, SPACO and SACEM are the society's only shareholders. The SODRAC Board of Directors consists of nine members, at least six of whom are authors and/or composers.

The society numbers some 3,500 Canadian members, and manages the reproduction rights of nearly 95% of the authors, composers and publishers in Quebec.

SODRAC is a member of CISAC and BIEM.

SODRAC

759 Victoria Square Suite 420 Montreal, Quebec H2Y 2J7 Tel: 514-845-3268 Fax: 514-845-3401 Website: www.sodrac.com E-mail: sodrac@mlink.net

CANADIAN RECORDING INDUSTRY ASSOCIATION (CRIA)

OFFICERS:

PRESIDENT: Brian Robertson

VP/GENERAL COUNSEL: Ken Thompson

CRIA is a non-profit trade organization founded in 1964 to represent the interests of Canadian companies that create, manufacture and market sound recordings.

Membership is comprised of the major record companies, leading independent labels, and all manufacturers of compact discs and tapes. Together they represent over 95% of the sound recordings manufactured and sold in Canada.

CRIA is governed by a Board of Directors elected annually by the membership from among the chief executive officers of member companies. The Board establishes policies. and elects the officers of the Association.

A number of CRIA's activities are administered by committees, comprised of specialists drawn from member companies, with outside specialists consulted where warranted. These committees include antipiracy; manufacturing; marketing; copyright; retailer liaison; statistics; and e-commerce/Internet.

CRIA 890 Yonge Street, Suite 1200 Toronto, ON M4W 3P4 Tel: 416-967-7272 Fax: 416-967-9415 Website: www.cria.ca E-mail: info@cria.ca

SONGWRITERS ASSOCIATION OF CANADA (SAC)

Officers:

PRESIDENT: Ian Thomas

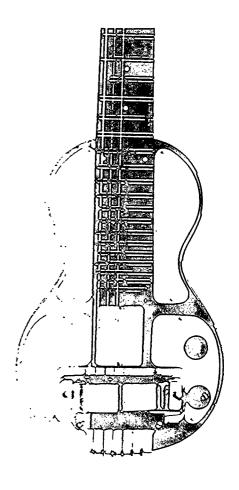
EXECUTIVE DIRECTOR: Sean Mulligan

Established in 1983, the Songwriters Association of Canada (S.A.C.) is the only Canadian national arts service organization representing both professional and aspiring songwriters. The group's mission is to protect and develop the creative and business environments for songwriters both within Canada and around the world.

The S.A.C. is led by active professional and amateur songwriters, with an aim toward providing a unified voice in addressing concerns over copyright legislation and other rulings that affect the work of creators.

To its members, the S.A.C. offers the country's most thorough song registry service, The Song Depository; numerous showcases and educational workshops and services; and a quarterly publication, Songwriters Magazine.

S.A.C. 3600 Billings Court Suite 204 Burlington, ON L7N 3N6 Tel: 905-681-5320 Fax: 905-681-5323 Website: www.songwriters.ca





COPYRIGHT FEES

1

Π

1

I

1

П

1

On July 1, 1999, substantial increases in copyright registration fees went into effect. Fees for the initial registration of copyrighted works increased from \$20 to \$30, while fees for renewal registration rose from \$20 to \$45 (in cases where the work had been previously registered) and to \$60 for works that had not previously been registered. The increases were a result of Congress asking the U.S. Copyright Office to become a more self-sustaining government agency.

It is important to note that, while these increases are significant, they are not as high as those initially proposed by the Copyright Office. If not for the lobbying efforts of the NMPA and other copyright industry groups, fees for initial registrations could have risen to \$50 per work, or nearly 150%.

Meanwhile, by implementing a streamlined and fully automated electronic registration program called the Copyright Office Electronic Recordation, Registration and Deposit System (CORDS), the Copyright Office expects to lower its overhead costs.

As a result, NMPA and other copyright groups are working with members of Congress to establish a follow-up review of the copyright fee issue within the next three years. It is hoped that the anticipated CORDS savings will be taken into account when future fee adjustments are considered.

CHALLENGE TO COPYRIGHT TERM EXTENSION

The Sonny Bono Copyright Term Extension Act of 1998 extended the term of copyright by twenty years, from life of the author plus fifty years to plus seventy, for works created on or after January 1, 1978. For works created prior to that date, the copyright term has been extended to ninety-five years.

A significant challenge to the Term Extension Act arose in federal district court in Washington, D.C. The case, Eldred vs. Reno, claimed the law is unconstitutional. Brought mostly on behalf of small publishers and archivists of public domain material, some of whom operate over the Internet, the case argued that such periods of copyright protection are excessive and violate the "limited time" language of the Copyright Clause.

The NMPA and other copyright groups maintained that copyright protection should exist for the life of the author and two succeeding generations in order to make equitable provision for authors' descendants.

In addition, the fact that the Bono Act finally brings the U.S. into harmony with the copyright law of other nations, as well as the idea that the Act encourages investment in existing copyrighted works to preserve them or increase their dissemination by converting them into digital formats, also underscored the need to uphold the law.

In a decisive victory for NMPA and other copyright industry groups, U.S. District Court Judge June Green upheld the constitutionality of the Sonny Bono Copyright Term Extension Act (CTEA) in a memorandum and order dated October 17, 1999. Judge Green's tersely worded memorandum rejected each of plaintiff Eric Eldred's claims, finding that the Constitution and controlling case law supported a ruling that the CTEA is not unconstitutional.

COPYRIGHT DAMAGES IMPROVEMENT ACT OF 1999

In the last hours before Congress adjourned for the year, both the House of Representatives and the Senate passed H.R. 3456, a bill to increase available statutory damage awards in copyright infringement actions. President Clinton signed the bill into law on December 9.

The new law increased minimum statutory awards from \$500 to \$750 per work infringed. The ceiling on damages for "regular" infringement has increased from \$20,000 to \$30,000, and the maximum for "willful" infringement has increased from \$100,000 to \$150,000 per work infringed. Through NMPA's efforts, the new law also includes a special effective date provision that will make increased damages available in any infringement brought after the date of enactment, even if the alleged infringement occurred before that date.

The law also contains provisions giving the U.S. Sentencing Commission special authority to rectify ambiguities in guidelines relating to the assessment of fines imposed in connection with criminal copyright infringement cases.

NMPA drafted the initial version of this legislation (H.R. 1761) and played a central role in building copyright industry and Congressional support for its enactment. The measure is expected to have a positive impact on publishers' efforts to settle infringement claims short of litigation, to deter infringement within the U.S. and to serve as a benchmark for other countries seeking to establish adequate and effective remedies for copyright infringement in their national laws.

RIAA E0033

ROYALTY RATE INCREASE

A new increase in the royalty rate for physical phonorecords went into effect on January 1, 2000. The new rate of 7.55 cents per composition/1.45 cents per minute supersedes the previous rate of 7.1 cents per composition/1.35 cents per minute, which went into effect on January 1, 1998.

THE CONFIGURATION ISSUE

Record companies have recently claimed that HFA licenses are not limited to the particular configuration specified, arguing that a lower rate license executed in 1980, covering vinyl phonorecords, should apply to the manufacture and distribution of the same album on CD in 1999.

Such a position was at the center of a settlement won by HFA against a major record company, a position supported by two U.S. Court of Appeals decisions. Those decisions held that licenses are limited to a particular record number, and therefore by configuration.

Recently, however, attention has turned to record clubs, which currently do not seek separate mechanical licenses for the songs used in the phonorecords they make and distribute; instead they rely on the mechanical licenses originally obtained by the record company.

As a result, one record company has stated that the record club practice can also apply to digital phonorecord deliveries in cyberspace.

These and other Internet-related questions of adequate copyright protection and payment for usage of copyright will doubtless continue to be debated for years to come.

DISTANCE LEARNING

Distarce learning allows someone at a remote location to participate in classroom learning through computer hookup. On May 25, 1999, Registrar of Copyrights, Marybeth Peters, testified before the Senate Judiciary Committee that some copyright policy recalculation may be necessary to accommodate the needs of learning institutions using copyrighted material in their distance learning programs.

NMPA and other music copyright industry groups continue to pledge their support of increasing educational opportunities, but do not believe that distance learning mandates an exemption from copyright infringement liability. Should the issue reach a legislative phase, the NMPA and its colleagues hope to ensure that reveral safeguards against mauthorized uses of copyrighted works are in place; and that the authorized uses works are clearly delineated.

EDUCATIONAL AND COMMUNICATIONS ACTIVITIES

NMPA's prestigious Music Publishers Forums marked their 21st year in 1999 Following the format of a series of pane discussions which focus on issues of inter est to the music publishing community the Forums are held several times per year in New York, Nashville, Los Angele: and Atlanta. The topics covered in the 1999 Forums included: Updates on both Internet and Street Piracy, "The Fine Print," on print music publishing "Downloadable Music: Marketing and Protecting Your Music on the Internet,' and "Music Publishing in the 21s" Century," which was held in conjunc tion with the Second Annual Native American Music Awards in Albuquerque New Mexico.

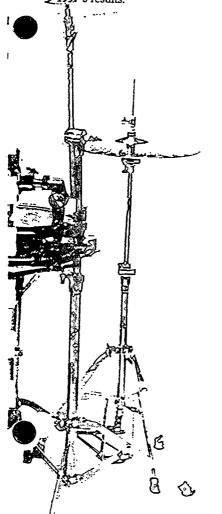
In addition to this Survey, NMPA publishes a newsletter, "News & Views," which is circulated internationally, and maintains a comprehensive website www.nmpa.org.



THE HARRY FOX AGENCY, INC.

The Harry Fox Agency, Inc. (HFA) is the major organization for mechanical rights administration in the U.S., licensing a large percentage of the uses of music in the U.S. on records, tapes, CDs and imported phonorecords. It also licenses music on a worldwide basis on behalf of its publisher principals for use in films, commercials, television programs and all other types of audio-visual media. HFA currently represents over 23,000 music publishers and more than 150,000 songwriters.

In 1998, HFA processed 203,136 licenses and collected \$436.9 million in royalties, distributing \$428.5 million to its publishers - an increase of 6% over 2597's results.



FOX AGENCY INTERNATIONAL

HFA, through its subsidiary Fox Agency International, Inc. (FAI), maintains its international coverage through direct agreements for reciprocal representation with five music rights societies operating in the Pacific Rim/Far East. FAI's regional affiliates - the Composers and Authors Society of Hong Kong Ltd. (CASH), the Filipino Society of Composers Authors and Publishers, Inc. (FILSCAP), Yayasan Karys Cipta Indonesia (KCI), the Korea Music Copyright Society (KOMCA), and the Music Copyright Society of China (MCSC) — afford the Agency a local presence in the territories of the Republic of the Philippines, the Republic of Indonesia and the People's Republic of China.

In 1999 a new Memorandum of Understanding (MOU) concerning the payment of mechanical royalties in several Asian territories was finalized, following the completion of negotiations that originally began in May of 1998.

The agreement was approved by top executives of the big five multinational record and music publishing companies and The Fox Agency International, Inc. It sets the ground rules for the manufacture and distribution of recorded music in thirteen Asian markets. The MOU specifies the procedure by which the record companies must account to music publishers for their activities at the royalty rates applicable in each territory. The Memorandum is also considered to have strengthened the rights of music publishers through the adoption of a more stringent audit clause.

HMPA'S BOARD OF

IRWIN Z. ROBINSON, CHAIRMAN FAMOUS MUSIC PUBLISHING

MARTIN BANDIER

FREDDY BIENSTOCK CARLIN AMERICA, INC.

HELENE BLUE
ANNA TERESA MUSIC

LEON BRETTLER
SHAPIRO BERNSTEIN & CO.

ARNOLD BROIDO
THEODORE PRESSER COMPANY

JOHN EASTMAN
MPL COMMUNICATIONS, INC.

NICHOLAS FIRTH
BMG MUSIC PUBLISHING

LANCE FREED
RONDOR MUSIC INTERNATIONAL

AL GALLICO MAINSTAY MUSIC

DONNA HILLEY
SONY MUSIC PUBLISHING

MAXYNE LANG WILLIAMSON MUSIC

LEEDS LEVY
CHRYSALIS MUSIC

BILL LOWERY THE LOWERY GROUP

EVAN MEDOW WINDSWEPT

STANLEY MILLS
SEPTEMBER MUSIC CORP.

JAY MORGENSTERN
WARNER/CHAPPELL MUSIC

RALPH PEER II

RIAA F.0035

There is no more important challenge facing the music industry today than taming Internet piracy and building a foundation for electronic commerce in music. As the use of music on the Internet grows, enforcing copyright protections presents challenges of major importance to the future of our industry. In order to meet the challenges, the anti-piracy and licensing activities of the music and recording industries are expanding.

While NMPA has strenously objected to the proliferation of illegal MP3 sites and other websites offering free downloads of copyrighted music, the music industry is actively trying to work with those Internet concerns that have demonstrated a spirit of cooperation in licensing musical uses on the Internet

To our industry, the Internet presents an enormous growth opportunity; but moving torward successfully will require all parties to work together to ensure a vibrant environment for intellectual property.

One such effort is the the Secure Digital Music Initiative (SDMI). SDMI is a forum of over 160 companies and organizations from multiple industries — including worldwide recording, consumer electronics, and information technology industries — whose goal is to develop

op a voluntary, open framework for playing, storing, and distributing digital music in a protected form. By its voluntary nature, SDMI allows that those who wish to use unprotected formats can continue to do so, while maintaining that copyrights must be respected. SDMI announced on November 12, 1999 that its participants had selected a copyright protection technology developed by ARIS Technologies Inc. for its portable device standard, and that it had approved interim licensing terms for use of a trademark indicating compliance with the SDMI guidelines.

The ARIS watermarking technology will indicate when the software used by initial, or Phase I, portable devices should be upgraded to incorporate Phase II technology. Until that time, all music compatible with a particular device will be playable, regardless of whether the music is in a protected format.

When Phase II technology is ready, detection of the watermark will automatically let consumers know that their software can be upgraded to play new music releases. Upgraded SDMI-compliant portable devices will continue to play existing music as well as future unprotected files, along with new music released with SDMI technology. When Phase II technology is in use, pirated copies of new music will be detected and rejected by SDMI-compliant devices.

NMPA supports the Secure Digital Music Initiative as one means of helping to protect copyrights in this new digital age. NMPA has strongly advocated that technologies to protect music should accommodate the use of an MMI (multimedia identifier) number to track the uses of copyrighted music and promote accurate royalty payments.

In parallel, various collecting societies under the auspices of the Confederation Internationale des Societes d'Auteurs et Compositeurs (CISAC) and the Bureau International des Societes Gerant les Droits d'Enregistrement et de Reproduction Mecanique (BIEM) are debating how best to license music and to collect royalties on cross border transmissions.

CISAC maintains that the issuance of one global license for music use on the Internet is a given. However, a consensus has yet to be reached over which society should issue that license. The U.S. societies believe that the license should be granted by the society of the country in which the server is located, while most European societies hold that the license should be granted by the society of the country in which the content provider has its principal economic residence. Today, in most - but not all instances, the server is located in the country where the content provider has its principal economic residence. CISAC has pledged to help bring the viewpoints of the U.S. and European societies closer together.

I

I

IL

7

П

In addition to the copyright legal issues affecting the Internet, it is important to consider where the Net market is today, and where it might be headed. By most estimates, approximately 75 million Americans are currently surfing the Net. That number is expected to rise to 179 million within three years.

While many demographic features regarding Internet usage are beginning to mirror those of the general American populace, research indicates that current Internet users are more affluent and better educated than most Americans, and are concentrated between the ages of 18 to 54 — the same age bracket that purchases about 75-80% of all recorded music, according to the Recording Industry Association of America (RIAA).

RIAA figures also show that 57% of consumers entering a physical or "brick and mortar" record store, or music section of a store, leave without purchasing, while over 50% of online shoppers do purchase something online.

In the future, the purchase of music online will probably go well beyond simply buying CDs or cassettes. Two primary businesses are evolving: streaming media and digital distribution.

According to Arbitron New Media/ Northstar Interactive, by the end of 1999 there were 95 million users worldwide of RealPlayer, a streaming technology, compared with 43 million in 1998 and 500,000 in 1995.

Digital downloading first came on the scene in 1994. As bandwidth increases, both digital downloading and streaming technologies should expand. The ultimate impact of digital downloading should be explosive, and the major record companies and independent labels are actively strategizing on what they consider to be the next great wave in music delivery.

That activity gives rise to the need for industry standards that both ensure copyright protection and alleviate consumer confusion. Different secure formats will be used by different labels, at least at first, while MP3 will remain a preferred format for independent labels and unsigned artists.

While most labels insist that digital downloading will remain a singles, rather than an album, business until broadband becomes widely available, it is estimated that 20% of U.S. homes will have broadband by 2002.

Technologies are being developed to facilitate e-commerce in music. One of the more ambitious involves IBM's Electronic Music Management System, code-named "Madison," a streaming and download technology which intends to address the issues of copyright security. It is supported and underwritten in part by the major multi-national record companies.

In February IBM and several record companies announced the successful completion of a six-month electronic music distribution trial called AlbumDirect — the market trial of an end-to-end digital music delivery system which offers a set of security features for the fast and convenient distribution, via the Internet, of CD-quality full-length albums and singles, as well as album artwork and liner notes. Some record labels are expected to begin making some of their music available through this service for sale online in early 2000.

As a result, several infrastructure technology and service companies are moving to set standards and clearly delineate their identities. These companies — operating in an area called digital-rights management (DRM) — are vying for what is estimated to be a \$27 billion business within three years.

The industry is also exploring new and innovative technologies for distributing and enjoying music. Some in the industry believe that a multi-task player combining a computer, Internet connection and television will become a mainstay in people's homes. With such a device, music would be stored on a "memory flash card" or a portable format similar in size to a credit card. Other options would allow consumers to rent music over the Internet by essentially programming their own radio stations from nearly infinite song selections for flat monthly fees, with artists and songwriters being paid on a "per use" basis.

Clearly there are many challenges to meet, both now and in the future. Education, protection and cooperation are essential in order to meet these challenges head-on, and to anticipate the changing needs of the music industry and consumers.

PERFORMANCE-BASED INCOME

Performance-based royalties consist mainly of those paid for the broadcast and public performance of copyrighted music, within a responding territory, regardless of the origin of the repertoire being performed. These royalties are principally collected by the major performing rights societies: ASCAP, BMI and SESAC in the U.S., for example; SACEM in France, BUMA in Holland, and PRS in the U.K.

RADIO:

In the U.S., performance societies use a system of "sampled" survey recordings or logs detailing what has been played at a local station during a defined period and/or statistical sampling, to create payment models for their member affiliates. Typically, the stations are authorized to use copyrighted musical compositions under blanket licensing agreements with the collective administrative societies.

RATES:

Royalty fees are calculated as a percentage of a station's annual advertising revenues, and distributed by a weighting process, as described earlier.

TELEVISION:

Television stations generally keep logs, or cue sheets, detailing the use and playtime of every musical composition aired. These cue sheets are forwarded to the collecting societies, which calculate payments according to usage and broadcast range (local or network).

RATES:

Like their radio counterparts, television broadcasts are covered typically by blanket licensing agreements between the copyright owners and the stations. The blanket fee is typically calculated as a modest percentage of the stations' annual gross advertising revenues.

CABLE/SATELLITE TRANSMISSIONS:

Cable and satellite TV transmissions are also licensed by the major performing rights societies, much the same way that broadcast TV is licensed. Rates are usually determined by size of the audience (transmission range) and usage.

LIVE PERFORMANCE AND RECORDED:

This category refers to recorded or live music played in a public place: nightclubs, bars, hotels, arenas, amusement parks, theatres, health clubs, etc.

Typically, royalty fees are set according to the type of venue and whether the performance is of live or recorded music; a wide number of other variables also help determine fees. For example, for a nightclub, live performance royalties can be determined by the club's annual live entertainment costs, while in some countries, performing rights societies collect performance fees from theater exhibitors based on a percentage of box office receipts.

REPRODUCTION-BASED INCOME

Income in this category represents royalties collected from record companies, and others, who reproduce copyrighted compositions for distribution to the public. Royalty collections are determined by the number of units sold in a particular medium. The right of reproduction is typically an exclusive right provided under copyright laws subject to some variation as described below:

PHONO-MECHANICAL:

Phono-mechanical royalties refer to revenues paid to copyright owners of musical compositions for the "mechanical reproduction" of those compositions on sound recordings (audio tapes, compact discs, records and other media), which are distributed to the public for private use. For this type of activity, copyright laws around the world frequently devolve this right from an exclusive right to a mere "right of remuneration."

Terms and conditions for the mechanical reproduction of musical compositions are frequently determined by collective bargaining between the music publishing and recording industries. Some countries, the U.S. among them, make legislative provision for so-called "statutory" mechanical rates.

Certain royalty rates are generally higher in Europe than in North America. In the U.S., the mechanical royalty rate is prescribed by legislation as a fixed-sum amount, or "penny rate" (6.95 cents in 1997, the period covered by this survey), for compositions up to five minutes in duration, or 1.3 cents per minute, or fraction thereof, for compositions in excess of five minutes duration) regardless of the selling price, if any, of the sound carrier on which the composition is contained.

In the vast majority of countries, however, the rates are periodically negotiated on a collective basis, and those rates are typically a percentage of the wholesale or retail selling price of the recording. These collected amounts are then distributed on a pro rata basis among the various compositions contained on the recording. The most commonly utilized agreement is known as the BIEM-IFPI contract, which is renegotiated every three years. More than 1000 record companies throughout the world are signatories to this agreement.

SYNCHRONIZATION:

Synchronization royalties are derived from the use of a musical composition in an audiovisual work, including: motion pictures, commercials, cable or broadcast television, satellite broadcast, video tapes, interactive media, etc. In these media. the musical composition is "synchronized" with the visua' images which appear on the screen.

For the purposes of this survey, this category also includes tran scription rights: the right to reproduce performances of a musi cal work in any type of electronic, magnetic or othe: non-phonogram recording for commercial purposes.

NMPA works on many fronts to protect its members' interests. As part of the effort to build support for international copyright issues, NMPA has been a founding member of three important organizations:

International Confederation of Music Publishers (ICMP)

Incorporated in Brussels, the Confederation is comprised of board members of the International Federation of Popular Music Publishers (IFPMP) and the International Federation of Serious Music Publishers (IFSMP), and acts as a global umbrella organization.

The ICMP is currently focusing on the EU Copyright Directive and corresponding "Green Paper."

ICMP also consults with the Bureau International des Societes Gerant les Drorts d'enregistrement et de Reproduction Mechanique (BIEM) on issues of mechanical concern.

c/o Vacher Desvernais Monod, 47 rue de Turbigo, 75003 Paris, France Tel: (33) 1 42 72 38 89 Fax: (33) 1 42 72 38 05

The International Copyright Coalition (ICC)

ICC was established in 1992 by the NMPA as a forum for international music licensing organizations to exchange ideas and information on audio home recording and digital delivery. It is now a coalition with twenty-one members operating in more than 80 countries and is chaired by Edward P. Murphy, President and CEO of NMPA/HFA.

At the eighth annual meeting of the International Copyright Coalition (ICC) held on January 19, 1999 during MIDEM, in Cannes, France, ICC Chairman Edward P. Murphy announced that a resolution had been adopted setting forth the Coalition's positions concerning copyright protection in cyberspace.

The unanimous resolution urges governments around the world "to strengthen the ability of rights holders to control the uses of their works in the digital environment, consistent with obligations under the new World Intellectual Property Organization Copyright Treaty." The ICC resolution also asks governments to approach the issue of online liability with "particular caution," and in all cases, to resist granting blanket exemptions.

c/o NMPA, 711 Third Avenue New York, NY 10017 Tel: (212) 370-5330 Fax: (212) 953-2384

The International Intellectual Property Alliance (IIPA)

This umbrella organization of eight trade associations was founded in 1984. It represents 1,500 copyright-based companies in the motion picture, videogame, book and music publishing, computer software and recording industries.

IIPA was organized to stimulate and augment U.S. government trade policy and actions against international piracy, and to persuade foreign governments to take positive action against copyright, patent and trademark infringement. Among its many activities. IIPA publishes an annual report of "special 301" recommendations to the U.S. Trade Representative's (USTR) office in support of the Administration's efforts to require adequate and effective copyright protection, and sufficient market access in foreign territories for U.S. works and companies, as a condition of maintaining favorable trade relations with the United States.

The IIPA also produces a report on copyright losses due to piracy, and the value of intellectual property. For Fiscal 1997, it reports that core "Intellectual Property" industries created 4.3% of the Gross Domestic Product, or approximately \$348.4 billion in value-added goods and services. These "IP" industries, then, represent the largest contributing sector in the U.S. economy.

HPA

Fax: (202) 872-0546

1747 Pennsylvania Avenue, NW, Suite 825 Washington, D.C. 20006-4604 Tel: (202) 833-4198

RIAA E0039

NMPA is also affiliated and/or involved with:

Bureau International des Societes Gerant les Droits d'Enregistrement et de Reproduction Mecanique (BIEM)

BIEM, a confederation of mechanical rights organizations from more than thirty countries, is the most important organization for mechanical rights protection throughout the world: HFA is a full voting member of BIEM and NMPA/HFA President and CEO, Edward P. Murphy, is a member of its Management Committee.

BIEM is responsible for negotiating with the International Federation of the Phonogram Industries (IFPI), the terms of a general licensing system for the reproduction of musical works on sound recordings. The licensing arrangements are then administered, where applicable, by BIEM's member organizations in their respective territories.

Much of BIEM's agenda depends on negotiations for the renewal of the BIEM/IFPI Standard Phonogram Agreement, which the two organizations negotiate about once every four or five years. The Standard Agreement assures its signatories that their repertoire will be used under the same general terms and conditions in all of the territories where it is in effect, thus forming the basis of reciprocal agreements between societies.

BIEM members are also exploring the implications of the digital exploitation of musical works, as well as the administration of so-called multimedia rights in certain new technologies.

BIEM

14, rue Lincoln, 75008 Paris, France Tel: (33) 1 53 93 67 00 Fax: (33) 1 45 63 06 11

International Confederation of Societies of Authors and Composers (CISAC)

This Paris-based organization is dedicated to protection of the moral, professional and economic interests attaching to every kind of literary and artistic property. NMPA is an associate member of this group, the only music publishers' organization represented among its ranks.

On February 1, 1999, Eric Baptiste, formerly chairman of tradeassociation Vive la Radio, and former executive president of Musiques France Plus, became secretary general of the organization. Shortly afterwards, on March 10, CISAC launched its website (www.cisac.org), which is available in English, French and Spanish.

The organization recently increased distribution of its newsletter, CISAC News, to journalists and relevant organizations outside of its member societies.

CISAC

11 rue Keppler, 75116 Paris, France Tel: (33) 1 47 20 81 01 Fax: (33) 1 47 23 02 66

The Federation of Latin American Music Publishers (FLADEM)

The Federation of Latin American Music Publishers (FLADEM) is an umbrella organization representing the interests of more than 4,000 music publishers actively involved in Spanish and Portuguese music. NMPA is a major financial supporter and the only trade association member represented in its ranks. NMPA is also represented on the Board of Directors, as well as on the Public Relations and Legal committees.

FLADEM is legally domiciled in Mexico, though its current president, Néstor Casonú, and executive director, Gustavo Saenz Paz, are both based in Argentina.

FLADEM

Callao 289, 1st floor, Buenos Aires, 1022, Argentina Tel: (54) 1 372 7820/9740 Fax: (54) 1 372 6837 Rio Guadalquivir No. 50-501 y 502, Col Cuauhtemoc Mexico, C.P. 06500 D.F. Tel: (52) 5 511 1488 Fax: (52) 5 514 1803

The World Intellectual Property Organization (WIPO)

WIPO is a specialized U.N. agency headquartered in Geneva. With 135 member governments, WIPO is responsible for the promotion of intellectual property rights, including copyrights, throughout the world.

WIPO's origins reflect the international community's long-standing concern about protection of intellectual property rights. In the 1880s, when the Paris and Berne Conventions were adopted, provision was made for an international bureau to protect literary and artistic works. WIPO, the modern incarnation of this bureau, was established in 1967 to coordinate inter-governmental cooperation in the field of intellectual property.

Since 1992, NMPA has participated in the Committees of Experts meetings convened by WIPO, to consider a Possible Protocol to the Berne Convention, and a Possible New Instrument for the Rights of Performers and Producers of Phonograms, as well as the Diplomatic Conference in December 1996, which resulted in the adoption of the WIPO Copyright Treaty, and the WIPO Performances and Programs Treaty.

WIPO

34, Chemin des Colombettes, 1211 Genève 20, Switzerland Tel: (41) 22 7309901 Fax: (41) 22 7335428 U.K. UPDATE

The British music industry continues to be in a state of flux. For the first six months of 1999, album shipments decreased by 7.8% in volume, while sales of singles rose by 5.1%. The end result, according to the IFPI, was a decline in overall retail sales value of 1.4% to £669.3 million (\$1.075 million).

Major changes continue to be felt at the record labels. Following years of rumors, British-owned EMI was finally acquired by Time Warner, with the latter company paying EMI shareholders around \$1.3 billion in cash. Coming only a few days after Time Warner's announced plan to merge with America Online, the EMI deal is pending regulatory approval.

The move followed by only a few longs the completion of the completion of the completion of the completion may ultimately power the independent sector, indeed such independent companies as live, Beggars Banquet and Ministry of Sound, as well as the nascent Association of Independent Music organization (AIM), support that thesis.

The rise of AIM could have a significant long-term impact on the British recording industry. Less than two years old but already boasting some 250 members, by late 1999 AIM had successfully formalized its working relationship with the British Phonographic Industry (BPI). The latter organization amended its constitution to provide funding for AIM, as well as decreeing that the BPI's ruling council will now provide an equal number of seats to major and independent labels.

Record distribution is also undergoing a change, with Sony and Warner launching a joint distribution venture, TEN, in April 1999, and BMG announcing in September 1999 that it was quitting distribution entirely, shifting its U.K. distribution operations to BDS, a German-based sister division of Bertelsmann.

Two months later, the Financial Times reported that EMI plans to stop manufacturing and distributing compact discs, and instead focus on the Internet as a distribution source. The paper quoted company sources as saying that its manufacturing and distribution operations in the U.S. and Europe may be put into a joint venture, or demerged into a separate company.

In the meantime, the country's collection society, the Performing Right Society (PRS), reported a record year in 1998, with turnover exceeding £217 million (\$348 million), membership surpassing 33,000 and costs held at 14% of revenue for the second straight year.

Of the monies received, £186.5 million (\$298 million) was distributed to members, while overseas income rose by 7.4% to £61.4 million (\$101.3 million).

The PRS has joined with ASCAP in the U.S. and Dutch authors' rights body BUMA-STEMRA to form the International Music Joint Venture (IMJV), a shared service center with over \$20 million in funding which will process music rights. The venture will be based in the Netherlands and is expected to be fully running by 2003.

By sharing integrated back office systems, the IMJV hopes to substantially reduce the cost of societal administration and increase efficiency, as well as modernize the individual societies systems to more easily accommodate the needs of its customers.

PRS will also launch the PRS Foundation in spring 2000, providing £1 million (\$1.7 million) per year in subsidies to workshops, performances and special projects by British composers and songwriters.

Meanwhile, a new group called the Alliance against Counterfeiting and Piracy (ACP), composed of Great Britain's entertainment industries and other consumer-goods businesses, has been formed to lobby the government to place the theft of intellectual property on a par with ordinary theft. Currently counterfeiters face a maximum sentence of two years in jail, compared with seven years maximum for other forms of theft.

The ACP claims copyright and intellectual property theft costs U.K. industry £6.42 billion (\$10.3 billion) a year. Members include the British Phonographic Industry, British Music Rights, the British Association of Record Dealers, the British Video Association, the European Leisure Software Publishers Association, the Business Software Alliance and British Brands Group.

THE MAIN ORGANIZATIONS OF THE BRITISH MUSIC INDUSTRY ARE:

MUSIC PUBLISHERS' ASSOCIATION (MPA)

OFFICERS

Crief Executive: Sarah Faulder

PRESIDENT:

Tom Bradley
(Financial Director, EMI Music Publishing)

VICE PRESIDENT:

Ben Newing (Schott Universal)

The MPA promotes and safeguards the interests of British music publishers at the governmental and industry levels. It also raises awareness among the general public of the important role played by music publishers. These objectives are achieved through monitoring and lobbying on new legislation; regular and close liaison with industry bodies, including in particular the collecting societies; and a program of seminars and training.

The MPA continues to develop its Catalog of Printed Music, available on CD-ROM, and to be the U.K. agency for administering the ten-digit International Standard Music Numbers (ISMNs) for use on printed music.

MPA

3rd floor, Strandgate 18/20 York Buildings London WC2N 6JU Tel: (44) 207-839-7779 Fax: (44) 207-839-7776 e-mail: mpa@musicpublishers.co.uk MECHANICAL-COPYRIGHT PROTECTION SOCIETY LTD. (MCPS)

Officers:

CHAIRMAN:

Jonathan Simon (Moncur Street Music, LTD.)

CRIEF EXECUTIVE:

John Hutchinson

DIRECTOR OF LEGAL AFFAIRS:

David Lester

MCPS, the licensing arm of MPA, traces its origins back to 1910. It differs slightly from HFA in that it has both publisher and composer members. The society acts on their behalf whenever copyrighted works are recorded by collecting the mechanical royalties due to them.

MCPS is a prime mover, together with the Performing Right Society, of the International Standard Work Code (ISWC), known as the "international tunecode." This 10-digit code is due to be introduced soon in the U.K. Electronic registration of claims is also under development, as is a framework for licensing multimedia product.

MCPS publishes a quarterly newsletter, "For the Record."

MCPS LTD. Elgar House

41 Streatham High Road London SW16 1ER Tel: (44) 208-769-4400 Fax: (44) 208-378-7300 Website: www.mcps.co.uk e-mail: mpa@musicpublishers.co.uk PERFORMING RIGHT SOCIETY LTD. (PRS)

OFFICERS:

CHAIRMAN:

Andrew Potter
(Oxford University Press)

DEPUTY CHAIRMAN:

David Bedford (composer)

CHIEF EXECUTIVE:

John Hutchinson

HEAD OF INTERNATIONAL:

Alan Balchin

PRS collects and distributes worldwide performance royalties on behalf of its composer and publisher members. The society derives income from the control of broadcasting and performing rights, issuing licenses to clubs, pubs, concert venues, etc. and to TV/radio broadcasters. A quarterly newsletter, PRS News, is also published.

PRS

29-33 Berners Street London W1P 4AA Tel: (44) 207-580-5544 Fax: (44) 207-306-4050 Website: www.prs.co.uk e-mail: info@prs.co.uk CHAIRMAN:

Rob Dickins

Director General:

John Deacon, C.B.E.

INDUSTRY (BPI)

HEAD OF ARTI-PIRACY:
Dave Martin

BPI represents the U.K. record industry to the government, to the European Union in Brussels and to the general public. It also negotiates agreements with other industry bodies, such as MCPS and the Musicians' Union, and produces an annual Statistical Handbook. Its free newsletter, BPI Insight, is published every four months.

BPI's Anti-Piracy Unit has been combating commercial piracy for more than twenty years, working closely with the International Federation of Phonographic Industries (IFPI).

Fund-raising events benefit the BRIT School for Performing Arts and Technology and a music therapy project, among others. In addition, BPI stages the annual "BRIT Awards" show, a highlight of the musical year.

BPI
25 Savile Row
London W1X 1AA
Tel: (44) 207-287-4422
Fax: (44) 207-287-2252
BPI Anti-Piracy Hotline: (44) 171-437-1493
Website: www.bpi.co.uk
e-mail: general@bpi.co.uk

BRITISH ACADEMY OF SONGWRITERS, COMPOSERS & AUTHORS (BASCA)

OFFICERS:

PRESIDENT: Sir Tim Rice

CHAIRMAN: Guy Fletcher

BASCA is the largest composers' trade association in Europe. Its members account for more than 70% of the total income of British composers.

The association is currently campaigning to end "social and cultural deductions" from performance income collected by the Continental societies for use of British repertoire. Since the funds — often from 10% to 15% of the Society's total collections — are used locally, BASCA calculates that British composers and their publishers incurred losses of almost \$10 million in 1994. As American composers and publishers are also disadvantaged by these deductions, they too will benefit if BASCA succeeds in changing European practice.

BASCA
The Penthouse
4 Brook Street
Mayfair
London W1Y 1AA
Tel: (44) 207-629-0992
Fax: (44) 207-629-0993
e-mail: basca@basca.org.uk

PHONOGRAPHIC PERFORMANCE LTD. (PPL)

Officers:

CHAIRMAN:

Tim Bowen (MCA Records)

Charles Andrews

MANAGING DIRECTOR:
John Love

HEAD OF LEGAL AFFAIRS:

Karen Wootliff

PPL is a non-profit organization established in 1934 by the recording industry for central administration of public performance and broadcasting rights in the U.K. PPL's members, in excess of 800, mainly include record companies and specialist repertoire producers. Extension of PPL's services to include foreign royalty collection is under consideration.

PPL has been actively campaigning for the International Standard Recording Code (ISRC) as the basic identifier for sound recordings. This is seen as the best way to ensure that copyright administration keeps pace with advancing technology.

PPL publishes a quarterly newsletter, "Playback."

PPL

1 Upper James Street London W1R 3HG Tel: (44) 207-534-1000 Fax: (44) 207-534-1111

VIDEO PERFORMANCE LTD. (VPL)

Officer:

COUSULTAUT:

Roger S. Drage

Founded in 1984, VPL is the sister society of PPL that administers public performance and broadcast rights in music videos on behalf of its record company members. VPL's address is the same as PPL but the telephone number is (44) 207-534-1400 and the fax number is (44) 207-534-1414.

BRITISH MUSIC RIGHTS (BMR)

OFFICERS:

CHAIRMAN:

Sir Alistair Hunter

DIRECTOR GENERAL:

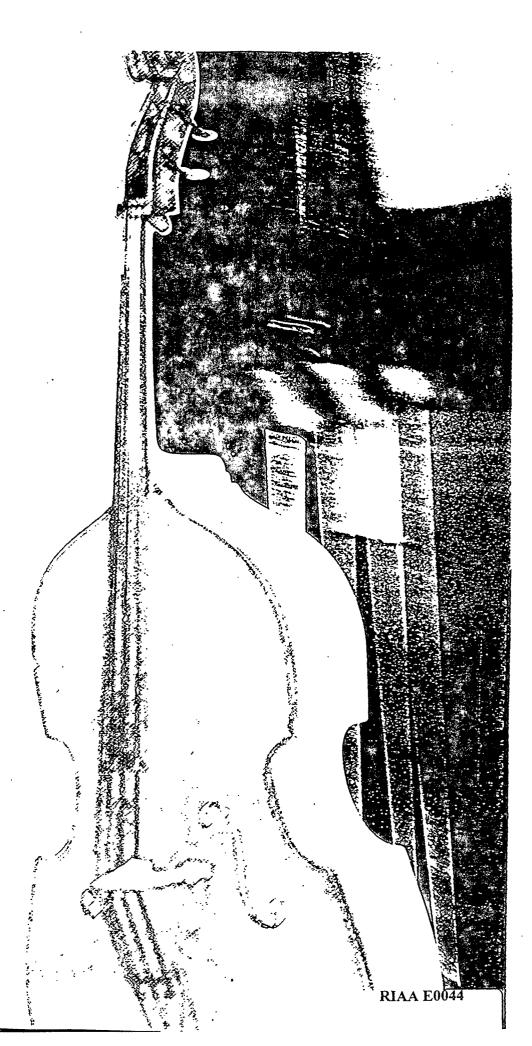
Nanette Rigg

British Music Rights was formed in 1997 by an alliance of composer and author organizations, the Music Publishers' Association, the Mechanical-Copyright Protection Society and the Performing Right Society. The aim of BMR is to promote the interests of the creators of music. As such, it has called for copyright reform to ensure the full payment of monies is made for music played and acquired via the Internet.

It has also called for telecom companies and Internet suppliers to be held responsible for rights infringements perpetrated using their systems, and for the creation of a government Task Force to ensure the effective monitoring and enforcement of copyright protection in the electronic distribution of music.

BMR

British Music House 25-27 Berners Street London W1P 3DB Tel: (44) 207-306-4446 Fax: (44) 207-306-4449 e-mail: britishmusic@bmr.org



JAPAN UPDATE

The Asian economic crisis has had a significant impact on Japan, with prices dropping 0.5% per month as the country entered 1999. While the dollar value of the market rose by over 4% in 1998, actual shipments declined by 2% to 302.4 million units, indicating that much of the value increase was attributable to higher retail prices.

Also blamed for the drop-off in units was increased competition from computer games, growth of home copying of CDs using Mini Disc software, and even Japanese teenagers using more time and money on mobile phones, according to the Recording Industry Association of Japan (RIAJ).

The music industry continues to debate the best means to adequately protect and pay for music on the Internet. Japanese authors' body JAS-RAC has proposed a copyright management system for the Internet called Dawn 2001, which would protect digitally transmitted music worldwide by establishing comprehensive rules and monitoring procedures, using electronic authorization and watermarking technologies, and is scheduled to go into effect by 2001.

The plan focuses on creating a unified copyright information and licensing system, and a comprehensive set of rules for music usage and copyright clearance procedures; monitoring and preventing illegal copyright usage while providing efficient usage licenses by utilizing new technology; ensuring expeditious work registration and accurate royalty distribution; and introducing new services that are made possible by the incorporation of

new technology, such as work registration by copyright owners.

JASRAC and the Network Music Rights Conference (NMRC) also continue to operate under an interim agreement for charged online music transmissions, applicable from the commencement of business activities up to March 31, 2000. Negotiations to determine licensing conditions for free online music transmissions are also underway between the two organizations.

Meanwhile, a challenge to JASRAC's long-held monopoly on the collection and distribution of music copyright royalties by the Music Copyright Agency (MCA), centered around MCA's seeking a license from the Agency for Cultural Affairs to collect and distribute royalties from such new media as CD-ROM, DVD and the Internet, has been withdrawn. MCA has indicated it may re-apply for that license in the future.

JASRAC's revenue for its fiscal year ending March 31, 1999 rose by 4.5% to reach \$826.8 million. Performance royalty collections increased 13.6% to \$284.6 million, due mainly to enforcement of regulations that went into effect in February 1998 requiring karaoke establishments with floor space of less than 178 square feet pay royalty fees. JASRAC currently collects from 60.4% of the karaoke bars in the country.

The organization further announced that in 2002 it will begin collecting performance royalties from businesses playing pre-recorded music, including bars and restaurants.

In the meantime, the Japanese government is currently contemplating revisions to the Law on Intermediary Business concerning Copyright, which regulates the activities of copyright administration entities in Japan. Such a revision could ultimately open the way to competition for the monopolistic JASRAC.

Japan's Federal Trade Commission has postponed a decision on the country's retail price maintenance system, "saihan," which mandates that domestically produced soundcarriers must be uniformly priced for two years. Some record companies have already reduced that period to as little as six months for singles. The system will likely not be scrutinized again until 2001, when a new government review takes place.

THE MAIN ORGANIZATIONS OF THE JAPANESE MUSIC INDUSTRY ARE:

JAPANESE SOCIETY FOR RIGHTS OF AUTHORS, COMPOSERS AND PUBLISHERS (JASRAC)

CHAIRMAN: Minoru Endo

President: Shigeru Yoshida

The sole musical copyright clearance organization in Japan, JASRAC administers nondramatic performing, broadcasting, cable transmission, mechanical reproduction, synchronization and distribution rights in musical works. The society's headquarters are in Tokyo, and it has twenty-three regional licensing offices throughout the country.

JASRAC also manages domestic and international music copyrights under agreements with ninety-one copyright societies in sixty-seven countries.

JASRAC 3-6-12, Uehara Shibuya-ku, Tokyo 151-0064 JAPAN Tel.:(81) 3 3481 2121 Fax:(81) 3 3481 2150 Website: www.jasrac.or.jp/ejhp/

MUSIC PUBLISHERS' ASSOCIATION OF JAPAN (MPA)

M PA
4th floor, Deim Aoyama Building
2-27-25 Minami-Aoyama
Minato-ku, Tokyo 107-0062
JAPAN
Tel.: (81) 3 3403 9141
Fax: (81) 3 3403 9140

RECORDING INDUSTRY ASSOCATION OF JAPAN (RIAJ)

RIAJ
Nittetsu Kobiki Building
7-16-13 Ginza
Chuo-ku, Tokyo 104-0061
JAPAN
Tel.: (81) 3 3541 4411
Fax: (81) 3 3541 4460
Website: www.japan-music.or.jp/

GEIDANKYO

Japan Council of Performers' Organizations

GEIDANKYO is a voluntary, non-profit organization established in 1967. Its main objective is to improve the economic status of performers by improving their working conditions.

GEIDANKYO collects secondary use fees from broadcasters and wire diffusers as well as remuneration from record rental businesses who offer commercial phonograms to the public for rental.

GEIDANKYO
Tokyo Opera City
Tower 11F
Nishi-Shinjuku,
Shinjuku-ku, Tokyo 163-1466
JAPAN
Tel.: (81) 3 5353 6600
Fax: (81) 3 5353 6614



GERMANY UPDATE

Long the world's third-largest record market, Germany reported a loss of nearly 10% for the first half of 1999, continuing a downward trend that has now lasted for over three years.

The value of sales was 9.9% lower than for the first half of 1998, according to the Federal Association of the Phonographic Industry (BPW), which represents 91% of the German market. Total unit sales were 114.5 million for the period, compared with 127 million the previous year.

According to the International Federation of Phonographic Industry (IFPI), the total value of the German recorded music market in 1998 was 2.7 billion euros (\$2.97 billion), a drop-off of 1.4% from the previous year. The country was thus believed by IFPI to have slipped to fourth place for the first time this decade, behind the United States, Japan and the U.K. Since BPW does not represent 100% of the German market, however, estimates are that Germany retains its third place status.

Nevertheless, the market is stagnating, and, thanks to a plateauing CD pene-

tration, coupled with dramatically rising CD-Recordable piracy, the trend may not be reversed soon.

According to BPW, revenue from pirated CDs is expected to top 250 million euros (\$262.6 million) this year, and could reach 500 million euros (\$525.3 million) in two years. By the end of 2001, some sources say that nearly 3.4 million CD "burner" devices in German households will be used to illegally copy 240 million CDs, or the equivalent of 10% of recorded music sales.

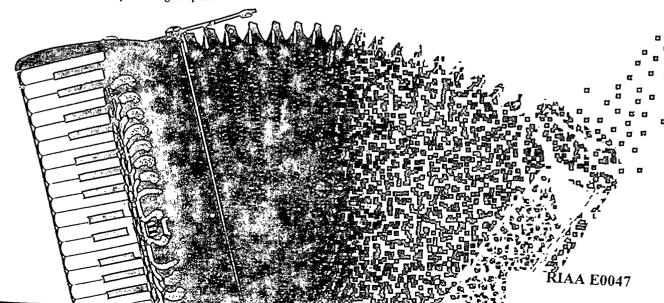
The CD-R trend has already made itself known to startling effect in neighboring territories like Holland and France, and German executives are scrambling to ensure the same does not happen there. Public awareness campaigns have been instituted to combat the trend, and some music executives are looking to the German government to introduce a significant levy on CD-Rs.

At the same time, some record labels are planning to release fewer legitimate albums in an effort to stem the perception that there is simply too much mediocre music being released.

Meanwhile, rights society Gesellschaft fur Musikalische Auffurhrungs und Mechanische Vevielfaltigungreschte (GEMA) reported a 2.7% overall increase in revenue to DM 1.46 billion (\$829.5 million) in 1998. That growth came mostly from increases in the amounts collected for live and broadcast performances. Live income was expected to rise by another 5% in 1999.

Mechanical income, which accounted for 26% of the total collected, fell slightly to DM 379 million (\$215.3 million) in 1998 and was believed to remain at that level for 1999, due to a decrease in singles sales and the lowering of the continental European mechanical rate following BIEM/IFPI negotiations.

In June 1999, the country's Minister of Justice announced the exploration of an increase in copyright royalties from the private copying sector as a means of aiding royalty collection. GEMA has held that existing statutory royalties, which have remained unchanged for fourteen years, are unfair to authors.



MMPA INTERNATIONAL SURVEY | MINTH EDITION

DEUTSCHER MUSIKVERLEGER-VERBAND (DMV)

DMV is the German music publishers' association. It is comprised of 480 member companies, of which two-thirds are primarily involved with popular music and one-third with classical music.

The Board of Directors includes: President, Maja-Maria Reis (Zimmerman Publishing); Vice President, Professor Dr. Hans Wilfred Sikorski (Hans Sikorski Publishing Group); Secretary, Wolfgang Mewes (Melodie der Welt); Treasurer, Klaus-Michael Karnstedt (Peer-Musik), as well as committee chairmen.

DMV's Managing Director is Dr. Hans-Henning Wittgen, and the Legal Advisor is Dr. Heinz Stroh.

In a major contribution to music literature, DMV has produced a CD-ROM version of the Catalogue of Printed Music (VLM). This marks the first comprehensive compilation of printed music based on a standard numbering system, the International Standard Music Number (a ten-digit number that has been widely adopted by the German music publishing industry for sheet music).

DMV

Friedreich-Withelm Strasse 31 53113 Bonn, Germany Tel: 49-228-238-565 Fax: 49-228-235-916

GEMA

GEMA, the Gesellschaft fur Musikalische Auffurhrungs und Mechanische Vevielfaltigungsrechte, is a successor to an organization founded in 1903 by Richard Strauss. GEMA administers non-dramatic performing, broadcasting, cable retransmission, mechanical reproduction, synchronization, and distribution rights in musical works.

GEMA has dual headquarters in Munich and Berlin as well as thirteen regional offices around the country. The President and General Manager is Professor Dr. Reinhold Kreile.

As no other music societies exist in Germany, GEMA enjoys de facto monopoly status. To ensure fairness, GEMA has voluntarily submitted to state regulation by the German Patent Office since 1952.

According to GEMA's Executive Vice President and Chief Legal Officer, Dr. Jurgen Becker, GEMA's monopoly status confers certain advantages for users of musical works, as musical repertoire is received from one source, without bureaucratic formalities and at calculable cost. He says that this aspect will assume even more importance in the multimedia and digital age.

To reflect its membership, GEMA's management board is made up of six composers, five publishers and four lyricists. Board membership is also open to the music publishing arms of record companies and to publishers with headquarters outside the European Union.

German royalty rates are set by the Copyright Administration Act.

GEMA's main sources of revenue are its performance rights, mechanical rights and broadcasting rights collections.

GEMA maintains relationships with all the leading mechanical rights and performing rights societies around the world, and works closely with NMPA/HFA. It is a member of BIEM, CISAC, and GESAC, the European authors' society.

GEMA

Head Office Munich Rosenheimer Strasse 11 81667 Munich, Germany Tel: (49) 89 4 80 03 01 Fax: (49) 89 4 80 03-940

Head Office Berlin Keithstrasse 7 10787 Berlin, Germany Tel: (49) 30 2 12 92-0 Fax: (49) 30 2 12 92-795 Website: www.gema.de e-mail: gema@gema.de

BRAZIL UPDATE

The largest music market in Latin America, and the sixth largest in the world, has had a tough time of it in the past couple of years. By year's end 1998 Brazil was well into a recession, and while economic policies designed to stimulate growth were in place by the end of 1999, the picture still seemed unlikely to improve in the near term.

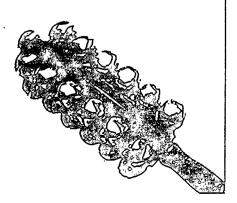
The country's music business experienced a decline of 14% in dollar value and 10% in units for 1998, according to the International Federation of Phonographic Industries (IFPI). An even more dramatic drop-off was recorded for the first six months of 1999, of 41% in dollar value and 31% in units.

Music trade magazine Music Business International estimated that for the full year of 1999, the market's value would show a decline of 24% to \$805 million, with total unit sales dropping 14.5% to 90 million.

To compound the decline, piracy has continued to explode in the country, as music pirates flood the market with cheaper and readily available product. In fact, the cassette market in the country is considered to be almost entirely pirate, and CD piracy is continuing to rise. Failure of the Brazilian government to combat such piracy could conceivably lead to pirate dominance in the CD market as well.

Publishing royalties are collected in Brazil using a two-tier system administered by government agency ECAD, of which ten author and composer societies are members. The two largest societies are UBC, which collects performance rights for more than 4,000 members, and SICAM, which collects performance and mechanical royalties for over 20,000 members.

Another Brazilian society, ABEM, has expressed interest in affiliating with the Federacion Latinoamericana de Editores de Musica (FLADEM), which represents a large number of music publishers and music publishers' associations in North, Central and South America, the Caribbean Islands and Spain.



THE MAIN ORGANIZATIONS OF THE BRAZILIAN MUSIC INDUSTRY ARE:

UNIAO BRASILEIRA DE COMPOSITORES (UBC)

UBC collects performance rights for over 4,000 members.

UBC

Rua Visconde de Inhauma 107 CEP 20091-000 Rio de Janeiro BRAZIL

Tel.: (011-5521) 223 32 33 Fax: (011-5521) 263 28 84

SOCIEDADE INDEPENDENTE DE COMPOSITORES E AUTORES MUSICALS (SICAM)

SICAM collects both performance and mechanical royalties for over 20,000 members.

SICAM

Largo Paissandu, 01034-010 Sao Paulo BRAZIL Tel: (011-5511) 223 88 63

Tel.: (011-5511) 223 88 63 Fax: (011-5511) 222 43 57

SOCIEDADE BRASILERIA DE AUTORES, COMPOSITORES E ESCR DE MUSICA (SADEMBRA)

SADEMBRA is one of Brazil's leading collection societies.

SADEMBRA

Avda Almirante Barroso, 2 Andar Centro Rio de Janeiro 20031-000 BRAZIL Tel.: (011-5521) 220 89 95 Fax: (011-5521) 220 93 45

ASSOCIACAO BRASILIERA DOS PRODUTERES DE DISCOS (ABPD)

ABPD is the Brazilian record industry's association.

ABPD

Ipanema, 22410-002 — Sala 904 Rio de Janeiro BRAZIL Tel.: (011-5521) 274 30 08

Fax: (011-5521) 259 41 45

FRANCE UPDATE

Following two years of decline, in 1998 the dollar value of the market in France rose by 3.6% to \$2.1 billion. Unit shipments also increased by 2.5% over 1997's total of 123.7 million, helping to maintain France's position as the world's fifth largest music market.

The French society SACEM reported that it had one of its best years ever in 1998, with an average increase in collections of 7.9%. Total distributions for 1998 grew by 8.6% to \$485.3 million, while payments to SACEM rose by 8.5% to \$386.3 million, and distribution to foreign societies grew by 12.1% to \$65.2 million.

Online music retailing has also continued to grow in the country, with Swedish online retailer Boxman announcing in March 1999 that it had launched a French site and retailing giant FNAC acquiring online bookseller Alibabook — which also offers music product on its site — in May 1999.

Sales of singles, however, continued to decline. Once one of the most vigorous sectors of the record business, in 1998 singles fell by nearly 6% to 40.9 million units.

As has been the case in many territories, an increase in home taping and piracy are being blamed for the downward trend. In fact, sales of recordable CDs and CD-R hardware have skyrocketed. As a result, recording industry association SNEP and collection society SACEM have forged an informal partnership to lobby the government for stricter anti-copying measures.

Music trade magazine Music Business International estimates that the value of piracy in France exceeded \$60 million in 1998, a total that is composed mostly of illegal CDs, which accounted for over 80% of the total of 4.6 million pirate units. Of the 30-35 million CD-Rs sold in France in 1998, 6 million are estimated to have been used to record music.

France and Germany have both voiced opposition to the removal of trade barriers by the European parliament, in the belief that such an act would encourage the flow of illegal music into their territories.

In the interim, SNEP introduced a new "silver" certification for debut albums selling over 50,000 units domestically. Previously certifications were only available for sales of 100,000 units (gold) or 300,000 units (platinum).

The French music industry has also been trying to increase exports of its domestic acts. As a result, the French government and label representatives opened the French Music Bureau in London on November 4, 1999. The office, operating under the direction of the French Embassy in London, is designed to promote French repertoire in the U.K. Similar offices have been opened in the U.S. and Germany.

THE MAIN ORGANIZATIONS OF THE FRENCH MUSIC INDUSTRY ARE:

SACEM

CHAIRMAN:

Jean-Loup Tournier

CHIEF EXECUTIVE:

Thierry Desurmont

The Societe des Auteurs, Compositeurs et Editeurs de Musique (SACEM) is an association administered by music creators and publishers. Its board of directors is composed of six authors, six composers, one author-director and six publishers.

SACEM

225 Avenue Charles de Gaulle 92521 Neuilly-sur-Seine Cedex, France Tel.:(33) 1 47 15 47 15 Fax: (33) 1 47 45 12 94

SNEP

The Syndicat National de l'Edition Phonographique is the recording industry's official organization.

SNEP

27 rue du Docteur Lancereaux 75008 Paris, France Tel.: (33) 1 44 13 66 66 Fax: (33) 1 53 76 07 33

SDRM

Officers:

PRESIDENT:

Pierre Tchernia

DELEGATED PRESIDENT:

Jean-Pierre Bourtayre

The Society for the Administration of Mechanical Reproduction Rights for Authors, Composers and Publishers was founded in 1935 to act on behalf of its associate member societies.

SDRM authorizes mechanical reproduction of members' works on audio or video recordings, by radio or television, sets the conditions for such licensing, and collects and distributes those corresponding rights.

SDRM is administered by a Board of Directors comprised of nineteen members appointed by the associate members for a period of one year.

SDRM can be contacted via SACEM.

INTERNET AUDIO SYSTEMS

A2B

Developed by AT&T, the a2b Player 2.0 claims to support secure downloads at a speed 25% faster than MP3, using streaming technology from RealNetworks.

AAC

Advanced Audio Codec (compression/decompression) jointly developed by Fraunhofer Ititut, Dolby Laboratories, Lucent Technologies, and Thompson, is used in Liquid Audio and most other Internet Audio systems.

IBM MADISON PROJECT

Originally code-named "Madison," IBM's Electronic Music Management System is a streaming and download technology which intends to address the issues of copyright security. It is supported and underwritten in part by the five major record lables.

LIQUID AUDIO

The Liquifier Pro, Liquid Music Server and Liquid Music Player form a suite of audio encoding, server/storage and playing tools. Liquid Audio's system supports secure management of audio files, and uses the AAC/MPEG codecs as its underlying file format.

MP3

Short for (Motion Pictures Experts Group) MPEG version 1 layer 3. MP3 is a file compression format for audio files. Typically 1 MB is equal to one minute of music or several minutes for spoken word/audiobooks. The sound is near CD quality. MP3 was jointly developed by Fraunhofer Ititut, Dolby Laboratories, Lucent Technologies, and Thompson. Most Internet audio codecs use the underlying MP3 technology.

REAL NETWORKS G2

RealNetworks offers its G2 player system and its REAL JUKEBOX system. RealNetworks is reported to be teaming with IBM to distribute the company's Electronic Music Management System download technology as a plugin to the basic RealPlayer.

SDMI

The Secure Digital Music Initiative (SDMI) plan to place an invisible technology into SDMI-compliant software and hardware that will prevent computer users from playing back unprotected music files, including MP3s. This "trigger" system has two phases. In the first phase, the technology will be invisibly integrated into all SDMI-compliant digital download players, including software-based music players and hardware portable devices. These players will continue to play unprotected MP3 files during this first phase. Concurrently, record labels add digital watermarking into audio CDs. During phase two, the technology will disable playback of all unprotected music content on a computer or portable music device.

The plan is strongly supported by the five major record companies, as well as Intel, Matsushita, Toshiba, and IBM. However, some hardware companies — such as Philips, who have plans for MP3-based music devices — are concerned that their consumers will be hurt when their MP3 files are no longer playable.

WAV

The Microsoft Windows standard audio file format. Converting audio to WAV format does not compress the signal, therefore the file size remains as large as the original, typically about 10 megabytes per minute of music. ٥١١، ١٩٢٢ لم المعلقة ا

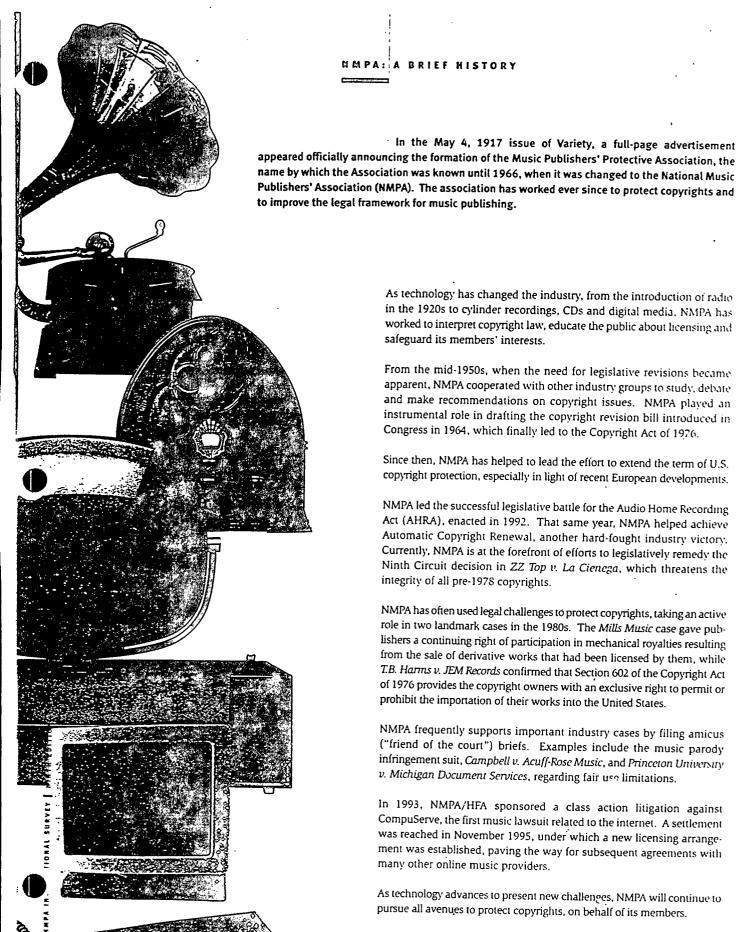
WINAMP

Currently, the most common MP3 freeware player distributed via the Internet.

WINDOWS MEDIA PLAYER

Microsoft's new streaming audio and video player will play most current formats, (Real Networks, MP3, etc.) as well as its own MS Audio 4.0 format. Microsoft claims that it is better than MP3 sound quality in less than half the storage space. It reportedly incorporates an end-to-end security system to protect music copyrights. It offers proprietary Liquid Audio download technology as an optional user plug-in.





As technology has changed the industry, from the introduction of radio in the 1920s to cylinder recordings, CDs and digital media. NMPA has worked to interpret copyright law, educate the public about licensing and safeguard its members' interests.

In the May 4, 1917 issue of Variety, a full-page advertisement

From the mid-1950s, when the need for legislative revisions became apparent, NMPA cooperated with other industry groups to study, debate and make recommendations on copyright issues. NMPA played an instrumental role in drafting the copyright revision bill introduced in Congress in 1964, which finally led to the Copyright Act of 1976.

Since then, NMPA has helped to lead the effort to extend the term of U.S. copyright protection, especially in light of recent European developments.

NMPA led the successful legislative battle for the Audio Home Recording Act (AHRA), enacted in 1992. That same year, NMPA helped achieve Automatic Copyright Renewal, another hard-fought industry victory. Currently, NMPA is at the forefront of efforts to legislatively remedy the Ninth Circuit decision in ZZ Top v. La Cienega, which threatens the integrity of all pre-1978 copyrights.

NMPA has often used legal challenges to protect copyrights, taking an active role in two landmark cases in the 1980s. The Mills Music case gave publishers a continuing right of participation in mechanical royalties resulting from the sale of derivative works that had been licensed by them, while T.B. Harms v. JEM Records confirmed that Section 602 of the Copyright Act of 1976 provides the copyright owners with an exclusive right to permit or prohibit the importation of their works into the United States.

NMPA frequently supports important industry cases by filing amicus ("friend of the court") briefs. Examples include the music parody infringement suit, Campbell v. Acuff-Rose Music, and Princeton University v. Michigan Document Services, regarding fair use limitations.

In 1993, NMPA/HFA sponsored a class action litigation against CompuServe, the first music lawsuit related to the internet. A settlement was reached in November 1995, under which a new licensing arrangement was established, paving the way for subsequent agreements with many other online music providers.

As technology advances to present new challenges, NMPA will continue to pursue all avenues to protect copyrights, on behalf of its members.

